

GENERAL AND PRIMARY
ELECTION LAWS
OF THE
STATE OF IDAHO



Issued by Authority of
W. T. DOUGHERTY
Secretary of State

Compiled, Annotated and Indexed by
M. H. EUSTACE
ATTORNEY AND COUNSELOR
Caldwell, Idaho

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TABLE OF CONTENTS.

Chapter

- I. Constitutional Provisions.
- II. General Provisions.
- III. Time for Holding Elections.
- IV. Notices of Election.
- V. Qualifications of Voters.
- VI. Election Precincts, Judges and Clerks.
- VII. Direct Primary Elections.
- VIII. Nominations.
- IX. Registration of Electors.
- X. Ballots and Supplies.
- XI. Conduct of Elections.
- XII. Absent Voting.
- XIII. Canvass of Returns.
- XIV. Presidential Electors.
- XV. Removal of County Seats and Changing County Boundaries.
- XVI. Special Elections and Vacancies.
- XVII. Elections for Erection of Public Buildings.
- XVIII. County Bond Elections.
- XIX. Municipal Elections.
- XX. Municipal Bond Elections.
- XXI. Contested Elections, Legislative and State Offices.
- XXII. Holidays.
- XXIII. Commission Form of Government.
- XXIV. Crimes Against the Elective Franchise.
- Appendix.

CHAPTER I.

CONSTITUTIONAL PROVISIONS.

Article I.

- Sec. 19. Right of suffrage guaranteed.
- Sec. 20. No property qualification required of electors.

Article III.

- Sec. 19. Local and special laws prohibited.

Article VI.

- Sec. 1. Secret ballot guaranteed.
- Sec. 2. Qualifications of electors.
- Sec. 3. Disqualification of certain persons.
- Sec. 4. Legislature may prescribe additional qualifications.
- Sec. 5. Residence for voting purposes not lost or gained.
- Sec. 6. Recall.

Article XVIII.

- Sec. 2. Removal of county seats.
- Sec. 3. Division of counties.

Article XX.

- Sec. 1. Amendment to Constitution.
- Sec. 2. Submission of several amendments.
- Sec. 3. Revision or amendment by convention.
- Sec. 4. Submission of revised Constitution to people.

ARTICLE I.

SEC. 19. *Right of Suffrage Guaranteed.* No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage.

That provision of the Direct Primary Law which requires a voter to vote for both first and second choice (Sess. Laws 1909, p. 196) is not in conflict with the above provision of the Constitution.

Adams vs. Lansdon, 18 Ida., 483, 110 Pac. 280.

Sec. 19, Art. 1 of the Constitution has reference to the attendance of officers, civil or military, at the polls, and prohibits them from interfering with the free and lawful exercise of the right of suffrage. Ib.

SEC. 20. *No Property Qualification Required of Electors.* No property qualification shall ever be required for any person to vote or hold office except in school elections or elections creating indebtedness.

Cited: Pioneer Irrigation District vs. Walker, 20 Ida. 605, 119 Pac. 304. Ferbrache vs. Drainage District, 23 Ida. 85, 128 Pac. 553. Under the provisions of Sec. 20, Art. 1 of the Constitution, the legislature has the power and authority to prescribe a property qualification for any person to vote at an election creating an indebtedness.

Bissett vs. Pioneer Irrigation District, 21 Ida. 98, 120 Pac. 461.

Municipal Bond Elections: This section authorizes the imposition, in a municipal charter, of a property qualification on the right to vote on a proposition for the incurrence of an indebtedness.

Wiggin vs. City of Lewiston, 8 Ida. 527, 69 Pac. 286.

ARTICLE III.

SEC. 19. *Local and Special Laws Prohibited.* The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

Providing for and conducting elections, or designating the place of voting.

The local option law (Laws 1909, page 9) is not in conflict with the provisions of Art. 3, Sec. 19 of the Constitution.

Gillesby vs. Board, 17 Ida. 586, 598; 107 Pac. 71.

ARTICLE VI.

SEC. 1. *Secret Ballot Guaranteed.* All elections by the people must be by ballot. An absolutely secret ballot is hereby guaranteed, and it shall be the duty of the Legislature to enact such laws as shall carry this section into effect.

Cross Reference: See notes under Art. 6, Sec. 2.

Numbering Ballots: Under the provisions of Sec. 1, Art. 6, of the State Constitution, it would not be within the power of the Legislature to authorize and direct the numbering of ballots to be used in an election.

McGrane vs. Nez Perce County, 18 Ida. 714, 112 Pac. 312.

There is no separate or distinct qualification provided by the Constitution for voters at elections held in counties, cities, villages or other municipalities. To all such elections, Secs. 1 and 2 of Art. 6 apply.

Pioneer Irrigation District vs. Walker, 20 Ida. 605, 612; 119 Pac. 304.

SEC. 2. *Qualifications of Electors.* Except as in this article otherwise provided, every male or female citizen of the United States, twenty-one years old, who has actually resided in this state or territory for six months, and in the county, where he or she offers to vote, thirty days next preceding the day of election, if registered as provided by law, is a qualified elector; and until otherwise provided by the Legislature, women who have the qualifications prescribed in this article may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho Territory.

Cross Reference: See notes under Art. 6, Sec. 1.

Cited: Powell vs. Spackman, 7 Ida., 693; 65 Pac., 503. Knight vs. Trigg, 16 Ida., 256; 100 Pac., 1060.

Registration: Sec. 2, Art. 6 of the Constitution of this State commits the subject of registration of voters entirely to the Legislature, and fully

authorizes the Legislature to enact such registration law as it deems wise; provided, of course, such law in no way contravenes any constitutional right of the elector.

Gillesby vs. Board, 17 Ida., 586; 107 Pac., 71.

Property Qualification: Sec. 2448 of the Revised Codes is void as being in conflict with the provisions of Art. 6, Secs. 1 and 2, providing a property qualification for electors in drainage districts.

Ferbrache vs. District, 23 Ida., 85; 128 Pac., 553.

Registration Unnecessary: Registration is not a substantive qualification of an elector in this state. Registration is intended only as a regulation of the exercise of the right of suffrage and not as a qualification for such right. The terms "elector" and "qualified elector" are used interchangeably, and an elector is a qualified elector (*Quarles, J., dissents*).

Wilson vs. Bartlett, 7 Ida., 271; 62 Pac., 416.

Bond Elections: This section only prescribes the qualifications of a voter at a general election, and is not infringed by a provision of a municipal charter imposing a property qualification on the right to vote on the question of incurring a municipal indebtedness.

Wiggin vs. Lewiston, 8 Ida., 527; 69 Pac., 286.

Disqualifications: No disqualification to hold office on account of sex which may exist under this section, can be raised in a proceeding, instituted after the wrongful removal of the officer, to compel her to deliver the papers of the office to her alleged successor.

Village of Kendrick vs. Nelson, 13 Ida., 244; 89 Pac., 755.

SEC. 3. *Disqualification of Certain Persons*. No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling, or offering to barter or sell his vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship, or who at the time of such election is confined in prison on conviction of a criminal offense, or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this State, or of the United States, forbidding any such crime; or who in any manner teaches, advises, counsels, aids or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of, or contributes to the support, aid, or encouragement of any order, organization, association, corporation, or society, which teaches, advises, counsels, encourages or aids any person to enter into bigamy, polygamy or such patriarchal, plural or celestial marriage, or which teaches or advises that the laws of this State prescribing rules of civil conduct, are not the supreme law of the State; nor shall Chinese or persons of Mongolian descent not born in

the United States, nor Indians not taxed, who have not severed their tribal relations and adopted the habits of civilization, either vote, serve as jurors, or hold any civil office.

Cited: Powell vs. Spackman, 7 Ida., 693; 65 Pac., 503. Adams vs. Lansdon, 18 Ida., 483; 110 Pac., 280.

Requirement of Test Oath: This section is not violated by the act of February 25, 1891, prescribing a test oath containing conditions of suffrage additional to those prescribed by this section.

Shepherd vs. Grimmett, 3 Ida., 403; 31 Pac., 793.

SEC. 4. *Legislature May Prescribe Additional Qualifications.* The Legislature may prescribe qualifications, limitations and conditions for the right of suffrage, additional to those prescribed in this article, but shall never annul any of the provisions in this article contained.

Cited: Powell vs. Spackman, 7 Ida., 693; 65 Pac., 503. Adams vs. Lansdon, 18 Ida., 483; 110 Pac., 280. Pioneer Irrigation District vs. Walker, 20 Ida., 605; 119 Pac., 304. Ferbrache vs. Drainage District No. 5, 23 Ida., 85; 128 Pac., 553.

Requirement of Test Oath: This section authorizes the Legislature to prescribe a test oath as a condition of suffrage, embracing clauses additional to those contained in Section 3 of this Article.

Shepherd vs. Grimmett, 3 Ida., 408; 31 Pac., 793.

Property Qualifications: This section is sufficiently broad to empower the Legislature to prescribe property qualifications on the right to vote in elections to create an indebtedness.

Wiggin vs. City of Lewiston, 8 Ida., 527; 69 Pac., 286.

SEC. 5. *Residence for Voting Purposes Not Lost or Gained.* For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this State, or of the United States, nor while engaged in the navigation of the waters of this State or of the United States, nor while a student of any institution of learning, nor while kept at any almshouse or other asylum at the public expense.

Inmates of Soldiers' Home: Under the provisions of this section, inmates of the Soldiers' Home cannot acquire, by reason of their presence in such Soldiers' Home, and while kept at public expense, the right to vote in the county and precinct in which such institution is located. (Sullivan, J., dissents.)

Powell vs. Spackman, 7 Ida., 693; 65 Pac., 503.

SEC. 6. *Recall.* Every public officer in the State of Idaho, excepting the Judicial officers, is subject to recall by the legal voters of the State or of the electoral district from which he is elected. The Legislature shall pass the necessary laws to carry this provision into effect.

Adopted Nov. 5, 1912. See Laws 1911, page 790; Laws 1913, page 677.

ARTICLE XVIII.

SEC. 2. *Removal of County Seats.* No county seat shall be removed unless upon petition of a majority of the qualified electors of the county, and unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal of the county seat shall not be submitted in the same county more than once in six years, except as provided by existing laws. No person shall vote at any county seat election, who has not resided in the county six months, and in the precinct ninety days.

Cross Reference: See Section 467.

Cited: People vs. George, 3 Ida., 72; 26 Pac., 983. Green vs. State Board Canvassers, 5 Ida., 130; 47 Pac., 259. McDonald vs. Doust, 11 Ida., 14; 81 Pac., 60.

Application: The limitations imposed by this section on the removal of a county seat which has been permanently fixed, do not apply to county seats temporarily located in a newly created county.

Doan vs. Board, 3 Ida., 38; 26 Pac., 167.

The provisions of this section refer to the removal of a county seat from its permanent location, and not to the permanent location of a county seat where the legislature has temporarily fixed the county seat of a new county, and left it with the electors to select the permanent county seat.

Leach vs. Village of Nez Perce, 24 Ida., 322; 133 Pac., 926.

Signers of Petition: The framers of the Constitution did not intend to prescribe a rule by which a majority of the qualified electors, contemplated by this section as signers of the petition for the removal of a county seat, should be ascertained, but left that rule to be established by the Legislature, as was done in Laws 1899, 41, Sec. 6, providing for county seat elections, and by which the qualified electors who sign the petition need not be registered voters. (Quarles, J., dissents.)

Wilson vs. Bartlett, 7 Ida., 271; 62 Pac., 416.

Under the provisions of Sec. 2, Art. 18 of the Constitution of Idaho, the petition for a removal of a county seat must be signed by a majority of the qualified electors of the county at the time the petition is filed.

Lippincott vs. Carpenter, 22 Ida., 675; 127 Pac., 557.

SEC. 3. *Division of Counties.* No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such provision: *Provided*, That this section shall not apply to the creation of new counties. No person shall vote at such election who has not been ninety days a resident of the territory proposed to be annexed. When any part of a county is stricken off and attached to another county, the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken.

Cited: People vs. George, 3 Ida., 72; 26 Pac., 983. Sabin vs. Curtis, 3 Ida., 662; 32 Pac., 1130. McDonald vs. Doust, 11 Ida., 14; 81 Pac., 60. Blake vs. Jacks, 18 Ida., 70; 108 Pac., 534.

Division of Territory: This section prohibits cutting off territory from one county and annexing it to another without submitting the proposition to popular vote, under the guise of an act purporting to create two new counties from the territory previously belonging to two existing counties, and so changing the boundary line between them as to give one of the counties a strip of territory which previously belonged to the other. The act of March 3, 1891, purporting to create and organize the counties of Alta and Lincoln was held on this ground to be unconstitutional (Sullivan, C. J., dissents).

People ex rel. Lincoln County vs. George, 3 Ida., 72; 26 Pac., 983.

Creation of New Counties: This section and the following one expressly authorize the creation of new counties, and in the creation of such a county, the Legislature may make any provision necessary to the complete organization of that county not specifically prohibited by the Constitution, and may provide for the apportionment of the debt of the original county and for transcribing the records.

Bannock County vs. Bunting, 4 Ida., 156; 37 Pac., 277.

Liability of Detached Territory: This section continues the liability of territory, detached from one county and annexed to another, for its ratable proportion of the debts of the mother county, and prohibits the Legislature from imposing such indebtedness on the county to which the detached territory is annexed. (Sullivan, J., dissents).

Shoshone County vs. Profitt, 11 Ida., 763; 84 Pac., 712.

ARTICLE XX.

SEC. 1. *Amendment to Constitution.* Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and, if the same shall be agreed to by two-thirds of all the members of each of the two houses, voting separately, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and it shall be the duty of the Legislature to submit such amendment or amendments to the electors of the State, at the next general election, and cause the same to be published without delay for at least six consecutive weeks, prior to said election in not less than one newspaper of general circulation, published in each county; and if a majority of the electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

Cited: Holmberg vs. Jones, 7 Ida., 752; 65 Pac., 563. Lansdon vs. Board of Canvassers, 18 Ida., 596; 111 Pac., 133.

Proposal of Amendments: An amendment to the Constitution may be proposed by joint resolution and need not be presented to the people by a formal statute.

Hays vs. Hays, 5 Ida., 154; 47 Pac., 732.

Adoption of Amendments: Where a majority of the electors voting upon a question of amendment of the Constitution vote in favor of the

amendment, the amendment is ratified, although the votes thus cast are not a majority of the votes cast at the general election for State officers.

Green vs. State Board of Canvassers, 5 Ida., 130; 47 Pac., 259.

Journal Entry of Vote in Legislature: The provisions of this section with reference to entering the proposed amendment or amendments, together with the yea and nay vote thereon, upon the journal, are mandatory.

McBee vs. Brady, 15 Ida., 761; 100 Pac., 97.

When Effective: This section provides that an amendment shall become a part of the Constitution upon its ratification, and the Legislature has no power to change this provision of the Constitution.

McBee vs. Brady, 15 Ida., 761; 100 Pac., 97.

SEC. 2. *Submission of Several Amendments.* If two or more amendments are proposed, they shall be submitted in such manner that the electors shall vote for or against each of them separately.

Cited: Green vs. State Board of Canvassers, 5 Ida., 130; 47 Pac., 259. This provision of the Constitution is mandatory.

McBee vs. Brady, 15 Ida., 761; 100 Pac., 97.

SEC. 3. *Revision or Amendment by Convention.* Whenever two-thirds of the members elected to each branch of the Legislature shall deem it necessary to call a convention to revise or amend this Constitution, they shall recommend to the electors to vote at the next general election, for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the Legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members, not less than double the number of the most numerous branch of the Legislature.

Cited: Green vs. State Board of Canvassers, 5 Ida., 130; 47 Pac., 259. Holmberg vs. Jones, 7 Ida., 752; 65 Pac., 563.

SEC. 4. *Submission of Revised Constitution to People.* Any Constitution adopted by such convention, shall have no validity until it has been submitted to, and adopted by, the people.

Cited: Green vs. State Board of Canvassers, 5 Ida., 130; 47 Pac., 259. Holmberg vs. Jones, 7 Ida., 752; 65 Pac., 563.

CHAPTER II.

GENERAL PROVISIONS.

Section	Section
344. Application of title.	346. Privilege from arrest.
345. Distribution of copies of law.	

SEC. 344. *Application of Title.* The provisions hereinafter enacted shall regulate and govern all elections hereafter holden in the State of Idaho for election of all officers provided for by the Constitution and the laws of the State of Idaho, at either general or special elections, except school district elections, and such other elections as are in these Codes elsewhere specially provided for.

Cited: Hertle vs. Ball, 9 Ida., 193; 72 Pac., 953. Cunningham vs. George, 3 Ida., 456; 31 Pac., 809. Sabin vs. Curtis, 3 Ida., 662; 32 Pac., 1130. Shoshone Highway District vs. Anderson, 22 Ida., 109; 125 Pac., 219.

District Elections: Registration is not required for highway district and other similar elections. Shoshone Highway Dist. v. Anderson (1912) 22 Ida., 109; 125 Pac., 219.

SEC. 345. *Distribution of Copies of Law.* It shall be the duty of the Secretary of State to cause to be published in pamphlet form and distributed, through the county auditors of the respective counties, a sufficient number of copies of this law, and of such other laws as bear upon the subject of elections, as will place a copy thereof in the hands of all officers of elections.

Copies of Election Law: The county auditor should supply all election officers with copies of the election law, and I believe the secretary of state so construed the law in having a sufficient number printed for all officers. Attorney General's Opinion, 1911-1912, p. 48.

SEC. 346. *Privilege from Arrest.* Electors are privileged from arrest except for treason, felony, or breach of the peace, during their attendance on election.

CHAPTER III.

TIME FOR HOLDING ELECTIONS.

Section	Section
347. Time for holding elections.	350. Same: Judges.
348. Officers to be elected: County officers.	351. Same: Presidential electors.
349. Same: State officers.	352. Same: Precinct officers.

SEC. 347. *Time for Holding Elections.* A general election shall be held in the several precincts in this State on the Tues-

day succeeding the first Monday of November, A. D. 1910, and on the Tuesday succeeding the first Monday of November every alternate year thereafter.

Cited: Kessler vs. Fritchman (dissenting opinion), 21 Ida., 30; 119 Pac., 692.

Definition: The "general election" is the election at which all State officers are elected. Whether an election is general or special is determined, not by the date on which it is held nor the authority which designates such date, but by the character of the election.

Doan vs. Board of Commissioners, 3 Ida., 38; 26 Pac., 167. The words "general election" as generally used in constitutions and statutes have reference to general elections held for the purpose of electing state and county officers. Kessler vs. Fritchman (1911), 21 Ida., 30; 119 Pac., 692; Ann. Cas., 1912C; see also dissenting opinion, 21 Ida., 58.

SEC. 348. *Officers to Be Elected: County Officers.* At the general election, A. D. 1910, and every fourth year thereafter, there shall be elected in every county of the State, a clerk of the District Court, who is ex-officio auditor and recorder, and at said general election, and every alternate year thereafter, there shall be elected in every county of the State, the following officers, to-wit: Three county commissioners; a sheriff; county treasurer, who is ex-officio public administrator; probate judge; county superintendent of public instruction; a prosecuting attorney; a county assessor, who is ex-officio tax collector; one coroner, and one surveyor.

Cited: Kessler vs. Fritchman (dissenting opinion), 21 Ida., 30; 119 Pac., 692. Castle vs. Bannock County, 8 Ida., 124; 67 Pac., 35.

Vote for Commissioners: While commissioners are elected one from each district, the voters of the whole county should cast their votes for each of the commissioners, and all the votes so cast should be counted in determining who is elected to the board.

Cunningham vs. George, 3 Ida., 456; 31 Pac., 809.

SEC. 349. *Same: State Officers.* At the general election, A. D. 1910, and every alternate year thereafter, there shall be elected the following State officers, to-wit: One Governor, one Lieutenant Governor, one Secretary of State, one State Treasurer, one State Auditor, one Superintendent of Public Instruction, one Attorney General, and one Inspector of Mines, and in each Representative and Senatorial district of the State such Representatives and Senators as they may severally be entitled to. Also on the first Tuesday succeeding the first Monday of November, A. D. 1910, and every alternate year thereafter, there shall be elected the number of Representatives in Congress to which the State may be entitled.

Cited: Kessler vs. Fritchman (dissenting opinion), 21 Ida., 30; 119 Pac., 692.

SEC. 350. *Same: Judges.* At the general election, A. D. 1910, and every alternate year thereafter, there shall be elected one Judge of the Supreme Court, and at said general election, and every fourth year thereafter, there shall be elected in each judicial district of the State, one District Judge.

Cited: Kessler vs. Fritchman (dissenting opinion), 21 Ida., 30; 119 Pac., 692; Joy vs. Gifford, 22 Ida., 301; 125 Pac., 181. Attorney General's opinion, 1909-1910, p. 42.

SEC. 351. *Same: Presidential Electors.* At the general election, A. D. 1912, and every fourth year thereafter, there shall be elected such a number of Electors of President and Vice President of the United States as the State may be entitled to in the Electoral College.

Laws 1909, page 6.

Cited: Kessler vs. Fritchman (dissenting opinion), 21 Ida., 30; 119 Pac., 692; State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

SEC. 352. *Same: Precinct Officers.* At the general election, A. D. 1910, and every alternate year thereafter, there shall be elected in each justice's precinct, except wards in incorporated cities, two justices of the peace and one constable, and all other officers, not herein specified, that now are, or hereafter may be, created shall, unless otherwise provided, be elected on the day of the general election.

Cited: Kessler vs. Fritchman (dissenting opinion), 21 Ida., 30; 119 Pac., 692. State vs. Vineyard, 9 Ida., 134; 72 Pac., 824.

Justices in Cities: This section has no application to the formation of justices' precincts and the provision for the election of two justices in all precincts "except wards in incorporated cities," does not constitute such wards justices' precincts, nor prohibit the county commissioners from establishing precincts within such cities.

Johnston vs. Savidge, 11 Ida., 204; 81 Pac., 616.

CHAPTER IV.

NOTICES OF ELECTION.

Section
353. Election proclamation.
354. Notices of election.
355. Same: Posting notices.

Section
356. Advertisement of special questions.

SEC. 353. *Election Proclamation.* At least forty days before each general election, and whenever he orders a special election, the Governor must issue an election proclamation under his hand and the great seal of the State of Idaho, and transmit copies thereof to the board of commissioners of the

counties in which such elections are to be held. Such proclamation must contain a statement of the time of election and of the offices to be filled.

Cited: Kessler vs. Fritchman (dissenting opinion), 21 Ida., 30; 119 Pac., 692. Budge vs. Gifford (1914), 26 Ida., 521, 527; 144 Pac., 333.

SEC. 354. *Notices of Election.* The clerks of the several boards of county commissioners must, at least twenty days before any general election, make out and transmit by registered mail to a judge of election of each election precinct, three notices to be, as nearly as circumstances will admit of, as follows:

"Notice is hereby given that on the Tuesday following the first Monday of November next, (or in case of a special election state the date thereof), at the (here designate polling place) in the county of _____, an election will be held for members of Congress, State, county, district and precinct officers (naming the candidates and offices to be filled as the case may be) (or in the case of a special election the question to be voted on) which election shall be open at eight o'clock in the morning and will continue until seven o'clock in the evening of the same day. Dated this _____ day of _____, A. D. 19_____.

(as the case may be).

(Signed) _____

Clerk of the Board of County Commissioners."

Laws 1913, page 376.

Notices: The clerk should transmit the notices called for in this section as well as published notices prescribed by Sec. 13, direct primary law of 1909. Attorney General's opinion, 1911-1912, p. 48.

SEC. 355. *Same: Posting Notices.* The judge of election aforesaid to whom such notices are transmitted as aforesaid, must cause to be posted, in three of the most public places of each election precinct, the notices referring to such election precinct, at least fifteen days previous to the time of holding any general election. Said notices shall be posted as follows: One at the house or place where the election is authorized to be held, and the others at two of the most public and suitable places in the precinct.

Laws 1913, page 377.

SEC. 356. *Advertisement of Special Questions.* Whenever a proposed Constitution or constitutional amendment, or other

question, is to be submitted to the people of the State for popular vote, the Secretary of State shall duly, and not less than thirty days before election, certify the same to the auditor of each county in the State. Questions to be submitted to the people of a county or municipality shall be advertised in some newspaper of general circulation in the county or town to be affected at least twice, and twenty days before election.

Cross Reference: Publication of constitutional amendments, Constitution XX, 1.

Constitutional Amendments: The publication of amendments as provided for in Const. XX, 1, is handled entirely by the secretary of state. This section has no reference to the publication of constitutional amendments. Attorney General's opinion, 1911-1912, p. 48.

Manner of Presenting Special Questions for Election: While the laws of the state provide for the county auditors upon receiving notification from the secretary of state for special questions to be voted upon, to make the proper publications and providing the ballots for such, in the case of an election for the location of a court house in a newly created county, although it is not absolutely necessary it might be a proper course for the county commissioners to incorporate in their minutes an order requiring the county auditor to provide for said election. Attorney General's opinion, 1911-1912, p. 38.

CHAPTER V.

QUALIFICATIONS OF VOTERS.

Section	Section
357. Qualifications of voters.	361. Same: Examination by registrar.
358. Disqualifications.	362. Same: Challenge of proposed voter.
359. Soldiers, sailors, students and inmates of asylums.	363. Same: Penalty for false statement.
360. Prostitutes and inmates of houses of ill-fame.	

SEC. 357. *Qualifications of Voters.* Every person over the age of twenty-one years, possessing the qualifications following, shall be entitled to vote at all elections: He shall be a citizen of the United States and shall have resided in this State six months immediately preceding the election at which he offers to vote, and in the county thirty days: *Provided*, That no person shall be permitted to vote at any county seat election who has not resided in the county six months, and in the precinct ninety days, where he offers to vote; nor shall any person be permitted to vote at any election for the division of the county, or striking off from any county any part thereof, who has not the qualifications provided for in Section 3, Article 18, of the Constitution; nor shall any person be denied the right to vote at any school district election, nor to hold any school district office on account of sex.

Cross Reference: Qualifications of electors: Constitution VI, 2. Legislature may prescribe qualifications additional to those prescribed by the constitution: Constitution VI, 4.

Application: The provisions of Section 357 of the Revised Codes, refer to the removal of a county seat from its permanent location, and not to the permanent location of a county seat where the Legislature has temporarily fixed the county seat of a new county, and left it with the electors to select the permanent county seat.

Leach vs. Village of Nez Perce, 24 Ida., 322; 133 Pac., 926.

Removal of County Seat: The requirement of a residence of six months in the county and in the precinct ninety days relates only to voters who are voting upon changes in the county seat and is a provision authorized by Const. XVIII, 2. There is no contradiction in the law and thirty days residence in the county is all that is required for registration. Opinion of Attorney General, 1905-1906, p. 148.

Residence: In a special election wherein the statute provides that persons having qualifications to vote at the regular election shall be entitled to vote at the special election, the provision requiring actual residence of six months in the state is binding, and the time spent in the preparation and intention to remove to the state could not be counted. Attorney General's opinion, 1909-1910, p. 63.

SEC. 358. *Disqualifications.* No person is permitted to vote who is under guardianship, idiotic or insane, or who has at any place been convicted of treason, felony, embezzlement of public funds, bartering or selling, or offering to barter or sell, his vote, or purchasing, or offering to purchase, the vote of another, or other infamous crime, and who has not been restored to the right of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense.

Cross Reference: Similar provision with additional clauses disfranchising polygamists. Constitution VI, 3.

Test Oath: Constitutionality: A territorial statute withholding the elective franchise from polygamists or members of any organization which teaches or encourages polygamy, and prescribing a test oath is not repugnant to the Federal Constitution.

Woolley vs. Watkins, 2 Ida., 590; 22 Pac., 102.

SEC. 359. *Soldiers, Sailors, Students and Inmates of Asylums.* For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this State or of the United States, nor while engaged in the navigation of the waters of this State, or of the United States, nor while a student of any institution of learning, nor while kept at any almshouse or other asylum at the public expense.

Cross Reference: Similar provision: Constitution VI, 5.

SEC. 360. *Prostitutes and Inmates of Houses of Ill-Fame.* No common prostitute, or person who keeps or maintains, or

is interested in keeping or maintaining, or who resides in or is an inmate of, or frequents or habitually resorts to, any house of prostitution or of ill-fame, or any other house or place commonly used as a house of prostitution or of ill-fame, or as a house or place of resort of lewd persons for the purposes of prostitution or lewdness, or who, being male and female, do lewdly and lasciviously cohabit together, shall be permitted to register as a voter or to vote at any election in this State, and any such person who shall so register or vote, or offer or attempt to so register or vote, shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Misdemeanor Not Cognizable by Justice of Peace: The penalty prescribed by this section is in excess of the jurisdiction of justice's and probate courts, and the only jurisdiction such courts have of the offense defined by this section is to hold a preliminary examination and commit the accused for trial by the District Court. *State vs. West*, 20 Ida., 387; 118 Pac., 773.

SEC. 361. *Same: Examination by Registrar.* Whenever any person within any of the prohibited classes mentioned in the preceding section shall offer himself or herself for registration, it shall be the duty of the registration officer, in addition to offering to said person any elector's oath provided by law, to examine such person as to his or her qualifications under the preceding section, and if such person is not qualified by reason of being within the prohibited class, it shall be the duty of the registration officer to refuse to register such person, and the registration officer shall keep a brief memorandum in writing showing all such examinations and his determination thereon.

Laws 1913, page 377.

SEC. 362. *Same: Challenge of Proposed Voter.* If any person within any of the prohibited classes mentioned in Section 360, shall be registered and shall offer to vote, he or she may be challenged for being within such prohibited class or classes, and thereupon such person shall be examined as to his or her qualifications under said section, and if the board of election is satisfied that such person is within any such prohibited class, his or her vote shall not be received.

SEC. 363. *Same: Penalty for False Statement.* If any person within any of the prohibited classes mentioned in Section 360 shall make any false answer to any such examination,

either by such registration officer, or on such challenge before board of election, it shall be considered and held to be a separate and distinct offense from any offense mentioned in Section 360, and on conviction thereof such person shall, in addition to any penalty incurred by any provision of said election, be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Laws 1913, page 378.

CHAPTER VI.

ELECTION PRECINCTS, JUDGES AND CLERKS.

Section	Section
364. Establishment of election precincts.	367. Appointment of judges and distributing clerks.
365. Changing boundaries of precincts.	368. Same: Vacancies filled by election.
366. Designation and plan of polling places.	369. Judges to appoint clerks.
	370. Compensation of judges and clerks.

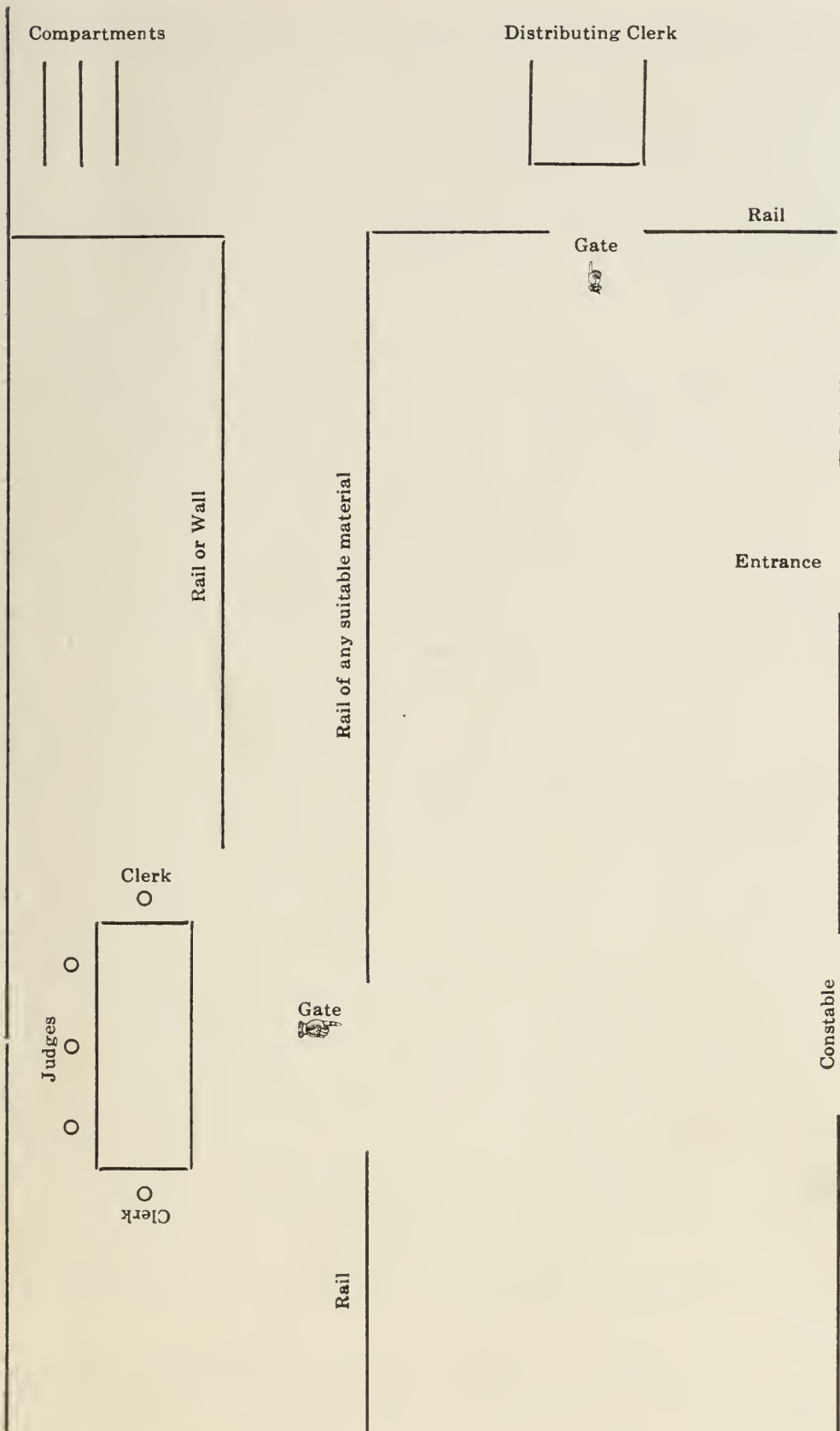
SEC. 364. *Establishment of Election Precincts.* The board of commissioners of each county must establish a convenient number of election precincts therein.

SEC. 365. *Changing Boundaries of Precincts.* The Board may, from time to time, change the boundaries of, create new or consolidate established precincts, but they must not alter or change any election precinct or change the place of holding election in any precinct after their regular July meeting next preceding any election: *Provided*, That the precincts established and the places designated in which to hold elections at the time of the taking effect of this Act shall so remain until changed.

Laws 1913, page 359, formerly amended by Laws of 1911, page 581.

SEC. 366. *Designation and Plan of Polling Places.* The county commissioners of each county, at their meeting in July next preceding any general election, shall designate and appoint suitable polling places, throughout the county, and shall cause the same to be suitably provided with a sufficient number of voting shelves or compartments, at or in which voters may conveniently mark their ballots, so that in the marking thereof they may be screened from the observation of others, and a guard rail shall be so constructed and placed that only such

persons as are inside said rail can approach within ten feet of the ballot boxes and of such voting shelves, places or compartments as are herein provided for. The arrangement shall be such that neither the ballot boxes nor the voting shelves or compartments shall be hidden from view of those just outside the said guard rail, and such polling places shall be as near as practicable in the following form:



The number of such voting shelves or compartments shall not be less than one for every fifty electors, or fraction thereof, registered in the precinct, and the expense of providing such polling places, compartments, guard rails, and all necessary supplies, shall be a public charge, and shall be provided for in the same manner as all other election expenses. Each voting shelf or compartment shall be kept provided with proper supplies and conveniences for marking the tickets. At their regular meeting in July next preceding any election, the board of county commissioners of each county shall, as far as necessary, alter or divide the election precincts in such manner that each election precinct shall not contain more than six hundred voters: *Provided*, That in precincts containing less than twenty-five registered voters the election may be conducted under the provisions of this title without the preparation of such booths or compartment as are required in this section.

In all municipal elections the duties specified in this section as devolving on the county commissioners, shall devolve on the officers in each city or town whose duty it is to designate and appoint polling places therein.

SEC. 367. *Appointment of Judges and Distributing Clerk.* It is the duty of the county commissioners, at their regular session in July next preceding a general election, to appoint three capable and discreet persons possessing the qualifications of electors, such persons to act as judges of election at each election precinct; and the clerk of the board must make out and deliver to the sheriff of the county, immediately after the appointment of such judges, a notice thereof, in writing, directed to the judges so appointed; and the sheriff, within ten days of the receipt of said notice, must serve the same upon each of the said judges of election by registered mail. If in any precinct any of said judges do not serve, the voters of said precinct may elect a judge or judges to fill the vacancy on the morning of the election, to serve at such election. The selection of officers must, as nearly as practicable, represent all the different political parties or principles represented by the nominees in each county. It shall be the duty of the judges to designate one of their number whose duty it shall be to perform the duty which heretofore has belonged to the distributing clerk.

All such judges of election shall hold office for two years, unless sooner removed by the board of county commissioners and shall act at all state and county elections.

Laws 1913, page 378, approved March 10, 1913. Formerly amended 1913 Laws, page 93, approved February 17, 1913.

SEC. 368. *Same: Vacancies Filled by Election.* If in any precinct any of said judges do not serve, the voters of said precinct may elect a judge or judges to fill the vacancy, on the morning of election, to serve at such election. The election of officers must, as nearly as practicable, represent all of the different political parties or principles represented by the nominees in each county.

Laws 1913, page 93.

SEC. 369. *Judges to Appoint Clerks.* The judges must choose two persons having similar qualifications with themselves to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers to be held at their respective wards or precincts until other judges are appointed and the said clerks of the election may continue to act as such during the pleasure of the judges of election. The County Commissioners must from time to time fill all vacancies which may occur in the office of judges of election at any election precinct within their respective counties.

Laws 1913, page 93.

SEC. 370. *Compensation of Judges and Clerks.* It is the duty of the clerk of the board of commissioners of each county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of the election are entitled for their services, and lay the same before the county commissioners at their next session, and the board of commissioners must order the compensation paid out of the county treasury. The compensation of judges of election and clerks is four dollars per day, and of constables, on duty at polling places, three dollars per day.

CHAPTER VII.**DIRECT PRIMARY ELECTIONS**

Chapter 6 of Title 3 of the Political Code was repealed by the 1909 Session Laws, page 196, which provides a complete system for primary elections.

Section

1. How nominated.
2. Defining political party.
3. When election shall be held.
4. Who can become a candidate.
5. Form of nomination paper and when to be filed.
6. Fee to be paid or petition filed.
7. Amount of fee and to whom paid.
8. Nomination papers. Where filed.
9. Percentage required to sign petition.
10. Acceptance of nomination: When filed.
11. Who may nominate candidates.
12. Secretary of State to transmit certified list. Nonpartisan judiciary.
13. Publication by County Auditors.
14. Official primary ballot to be printed.
15. Manner of voting.
16. Who shall pay for supplies.
17. Qualifications of voters.
18. False swearing: Punishment.
19. Forgery: Punishment.
20. Time of opening and closing polls.
21. General laws applicable.
22. Sales of liquor prohibited on election day.

Section

23. Duties of Secretary of State and County Auditors.
24. Expenditures of money by candidates.
25. Same: Statement of expenses.
26. Same: Neglect to file: Penalty.
27. Improper influences prohibited: Penalty.
28. Same: Personal expenses.
29. County central committees: Elections and duties.
30. Platforms: How promulgated.
31. Candidate nominated on more than one ticket.
32. Canvassing votes.
33. Tally sheets: Form.
34. Candidates: Who nominated.
35. Same: Tie: Determination.
36. Ballots: Clerk of county commissioners to retain.
37. Canvass by county commissioners.
38. State Board of Canvassers: Duties.
39. Vacancies: How filled.
40. U. S. Senators: Vote to be certified to Legislature.
41. Candidates for Legislature may file declaration of choice for U. S. Senator.
42. U. S. Senators: Election.
44. Registration.

SEC. 1. *How Nominated.* Hereafter all candidates of political parties for Congress, and for all elective State, District and County offices, at regular elections, shall be nominated at a primary election conducted substantially according to the provisions of this Act.

Laws 1909, page 197.

Construed: State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

State Regulation Mandatory: The act known as the primary election law (Laws 1903, p. 360, Revised Codes, Secs. 371-81) is mandatory and applies to and governs all political parties not therein specifically excepted. Walling vs. Langsdon (1908), 15 Ida., 282; 97 Pac., 396.

Where the Legislature of the State has regulated the method and manner of holding primary elections, the selection of delegates and the conduct of conventions, the legal rights of citizens participating therein shall be protected. Party conventions cannot confer rights or privileges upon persons not elected according to law, or deny rights or privileges to persons elected according to law. *Ib.*

SEC. 2. *Defining Political Party.* A political party, within the meaning of this Act, is an affiliation of electors representing a political organization under a given name, which at the last preceding general election cast for any candidate on their ticket for office within the State at least ten per cent of the total vote cast for all candidates for the same office within the State, and upon which ticket there were at least three nominees for State offices.

Laws 1909, page 197.

Construed: State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

Political Parties: All political parties coming within this definition are required to make nominations at the direct primary election held on the date fixed by law. State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

SEC. 3. *When Election Shall Be Held.* A Primary Election shall be held on the first Tuesday of September, 1914, and biennially thereafter, for the nomination of candidates required to be nominated according to the provisions of this Act to be voted for at the succeeding general election in November.

Laws 1913, page 348.

Historical: Laws 1909, page 197, fixed time as last Tuesday in August. Laws 1911, page 571, fixed time as last Tuesday in July.

SEC. 4. *Who Can Become a Candidate.* Any person legally qualified to hold such office is entitled to become a candidate for office, and to have his name placed upon the ballot provided for any primary authorized herein, upon a substantial compliance with the terms of this Act, and not otherwise.

Laws 1909, page 197.

Candidate as Nominator for Another: I find nothing in the law which would prevent one who had signed the petition of someone else afterward becoming a candidate himself for the same position. Attorney General's opinion, 1909-1910, p. 86.

SEC. 5. *Form of Nomination Paper, and When to Be Filed.* Each candidate for office, or some qualified voter in his behalf, shall file a nomination paper in the proper office, as herein provided, at least thirty days, and not more than sixty days, prior to the primary to be held to nominate candidates for such office, in substantially the following form, to-wit:

"I, the undersigned, being a qualified elector of _____ precinct, _____ County, State of Idaho, and a member of the _____ party, hereby nominate _____ who resides in the town of _____, _____ precinct, _____ County, State of Idaho, as a candidate for the office of _____, to be voted for at the primary to be held on the _____ day of _____, 19____, and certify that he is legally qualified to fill said office, and represents the principles of said party. And I hereby declare that I intend to support said candidate for said office, and that I have signed no other nomination paper for a candidate for the same office, and believe that said person would accept said nomination."

All blank spaces shall be properly filled in with the necessary information. Said nomination paper shall be subscribed and sworn to before some officer authorized to administer oaths: *Provided*, That the nomination paper of any candidate for the office of Justice of the Supreme Court or district judge, shall not state the party affiliation of such candidate, nor the party affiliation of the elector filing such nomination paper.

Laws 1913, page 349; was formerly Laws 1909, page 197.

Provisions Mandatory: The provisions of this section in regard to the filing of nomination papers are mandatory.

Seawell vs. Gifford, 22 Ida., 295; 125 Pac., 182.

The Secretary of State is justified in refusing to file any nomination paper which is not presented for filing at least 30 days before the day fixed for holding the primary election.

Seawell vs. Gifford, 22 Ida., 295; 125 Pac., 182.

No Nomination by Petition: There is at present no method by which a person's name can be placed upon the official primary ballot by petition, it being necessary in all cases to file a nomination paper, signed as provided in this section, and to pay the fee provided in Sec. 7. Attorney General's opinions, 1913-1914, p. 36; 1915-1916, p. 35.

SEC. 6. *Fee to Be Paid or Petition Filed*. A fee shall be paid, or in lieu thereof a petition shall be filed by, or on behalf of, each candidate for office at the time of the filing of his nomination paper.

Laws 1913, page 349. Formerly Laws 1909, page 138.

Cited: Adams vs. Langsdon (1910), 18 Ida., 483; 110 Pac., 280; Ann. Cas., 1915A, 367.

SEC. 7. *Amount of Fee and to Whom Paid*. The fee to be paid by, or on behalf of, any candidate, in case no petition be filed asking for his nomination as authorized herein shall be

the sum of \$2.00 for any office with a salary of \$300 or less per annum; when such salary exceeds the sum of \$300 per annum an additional sum equal to one per cent thereof on such excess.

Said fees to be paid to the following officers, to-wit:

When the candidacy is for a Congressional, State or District office embracing more than one county, the fee shall be paid to the Secretary of State to be paid by him to the State Treasurer, and when for district offices for more than one county the same shall be divided equally between the counties composing such district and paid to the respective treasurers thereof, and the Secretary of State shall issue all necessary warrants for such payments on the State Treasurer. When such fees are for county offices such fees shall be paid to the county auditors, and by them to the respective county treasurers.

Laws 1913, page 349. Formerly Laws 1909, page 198.

Cited: Adams vs. Langsdon (1910), 18 Ida., 483; 110 Pac., 280. State ex rel. Spofford vs. Gifford (1912), 22 Ida., 613; 126 Pac., 1060.

SEC. 8. *Nomination Papers: Where Filed.* All nomination papers herein required shall be filed as follows:

For candidates for Congress, State officers and officers of districts that comprise more than one county, and to express a preference for United States Senator, in the office of the Secretary of State. For candidates to be voted for wholly within one county, in the office of the County Auditor of such county.

Laws 1913, page 350. Changes materially the section as it previously existed. Laws 1909, page 198.

Cited: State ex rel. Spofford vs. Gifford (1912), 22 Ida., 613; 126 Pac., 1060.

SEC. 9. *Percentage Required to Sign Petition.* Laws of 1909, page 199, repealed by Laws of 1913, page 350.

SEC. 10. *Acceptance of Nomination: When Filed.* Within 5 days after a nomination paper has been filed, if for a county office, and within 10 days if for any other office, there shall be filed in the same office, an acceptance of said nomination signed by the candidate therein nominated, in default of which the name of said person shall not be placed upon the ballot as a candidate for such office: *Provided*, No acceptance need be filed where a candidate executes and files his own nomination paper. And *Provided further*, That this section shall not pre-

vent the acceptance by said person of a nomination for the same office made by other legal nomination papers duly filed.

Laws 1913, page 350. Formerly Laws 1909, page 199.

Time for Acceptance: Under the provisions of this section the time for filing an acceptance of nomination by a candidate is computed by excluding the first day and including the last day, unless the last day is a holiday, in which case it is also excluded and the candidate has the following legal day to file his acceptance.

Seawell vs. Gifford, 22 Ida., 295; 126 Pac., 182.

Construction: A person may be nominated and may let the time elapse in which to file his acceptance, or may even decline to accept, and yet the same candidate may if his nomination is filed again within the time allowed by law accept the second nomination notwithstanding he has declined the former one, or failed to accept within the time required by statute. Attorney General's opinion, 1911-1912, p. 48.

SEC. 11. *Who May Nominate Candidates.* Any organization of electors not governed by the terms of this Act may nominate candidates in the manner provided by existing laws: *Provided*, That all conventions for the nomination of candidates to be voted for at a general election shall be held on the same day as the primaries are held under this law to nominate candidates for the same positions.

Laws 1909, page 199.

Time for Holding Conventions: Under the provisions of this section "any organization of electors not governed by the terms" of the act must hold their conventions for the nomination of candidates on the same day that the direct primary election is held.

State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

Convention Defined: "Convention" as used and employed in the direct primary election law, means an organized body of delegates or representatives assembled for the purpose of making nominations, and does not have reference to a mass meeting or assemblage of persons who represent themselves only, but is intended to be an assemblage or body selected or appointed by some class, body or party of electors as representatives of the people, party or district making the selection or appointment.

State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

SEC. 12. *Secretary of State to Transmit Certified List: Non-Partisan Judiciary.* At least twenty days before any primary in September, the Secretary of State shall transmit to each county auditor within the State a certified list containing the name, postoffice address, and party designation of each person entitled to be voted for at such primary, within the respective counties, and the office for which he is a candidate, as appears from the nomination papers filed in the office of the Secretary of State. *Provided*, Said list shall not contain the party designation of candidates for Justice of the Supreme Court and district judges.

Laws 1913, page 350. Originally Laws 1909, page 199, amended by Laws 1911, page 571.

SEC. 13. *Publication by County Auditors.* The County Auditor of each county shall cause to be published a notice containing the names and addresses of all persons for whom nomination papers have been filed in his office, and then shown by the certificate from the Secretary of State, under the proper party designation and title of each office; giving the date of the primary to be held to nominate candidates for such offices, the hours during which the polls will be open, and that the primary will be held at the regular polling place in each precinct; and the names of candidates for each office shall appear in alphabetical order according to the letters of the surname; said notice to be published at least once a week for two successive weeks in two newspapers published within said county, representing the two political parties that received the largest vote at the last general election, if there are two such papers published within his county, and if not, then in two newspapers representing such parties which shall have an extensive general circulation within said county; and shall cause to be posted in a conspicuous place a copy of such notice at the regular polling place in each precinct, and at or near each postoffice situated within said county.

Laws 1909, page 200.

Notices: The clerk should transmit the published notices prescribed in this section as well as those called for in Sec. 354. Attorney General's opinion, 1911-1912, p. 48.

SEC. 14. *Official Primary Ballot to Be Printed.* As soon as possible after the time has expired for the filing of nomination papers in his office, and the receipt of the certified list of candidates from the Secretary of State, the County Auditor of each County shall prepare a form of official ballot for each political party which has qualified as hereinbefore provided and which has candidates regularly nominated for office; the names of candidates for each office shall be arranged thereon alphabetically according to the first letter of the surname of each candidate. The official primary ballot shall be printed therefrom in the following manner: The name of candidates under headings designating each official position shall be alternated thereon in the printing in the following manner, namely:

First: The form shall be set up with the names of candidates in the order in which they appear upon the form of official ballot prepared by the County Auditor; in printing

each set of official ballots for the various election precincts the position of the names shall be changed in each office division as many times as there are candidates in the office division or group in which there are the most names; as nearly as possible an equal number of ballots shall be printed after each change. In making the changes of position the printer shall take the line of type at the top of each office division and place it at the bottom of that division, shoving up the columns so that the name that was second before shall be first after the change. After the ballots are printed, before being cut they shall be kept in separate piles for each change of position and shall then be piled, taking one from each pile, and placing it upon the pile to be cut; the intention being that every other ballot in the pile of printed sheets shall have the names in different position. After the piles are made in this manner they shall be cut and placed in blocks of one hundred ballots in each block, every other ballot in such blocks to have the names in different positions, as nearly as practicable. The said ballots shall be prepared in substantially the form of sample ballots hereto attached. For each party there shall be a separate ballot uniform in size and printing, white and printed in black ink. Across the top of each ballot shall be printed in plain type:

First. The words "Official Primary Ballot."

Second. The name of the party.

Third. The name of the County in which the ballot is to be used.

Fourth. "Instructions. You may at your option vote for both first and second choice if there are more than twice as many candidates as there are positions. To vote for a person for first choice make a cross (X) in the first square at the right of the name of the person for whom you desire to vote. To vote for a person for second choice make a cross (X) in the second square to the right of the name of the person for whom you desire to vote. You may vote for any qualified elector whose name is not printed on the ballot by writing the name of the person thereon under the appropriate heading and making a cross (X) in the proper square at the right of such name. Do not vote for the same person for both first and second choice. In voting for candidates for Justice of the Supreme Court and District Judge you should vote for twice as many candidates as there are positions to be filled at the ensuing general election. After marking the ballot hand it to a Judge to be placed in the ballot box for votes."

Each ballot shall be divided by a line into three equal columns. In the first, or left hand column, shall be the names of candidates for United States Senator, Representatives in Congress and State offices, excepting Judicial offices. In the second column shall be the names of all candidates for the Legislature and all county offices. In the third column, above which shall be printed the heading "Non-Partisan Judicial Candidates," shall be placed the names of all candidates for Justice of the Supreme Court and District Judge to be voted for in such County under the names of the offices but without reference to party affiliation. A blank space shall be provided under each official heading, in order that a voter may write in the name of a candidate for any office. On the same line with the official designation of the office shall be the instruction, "Vote for-----," giving the number of candidates to be voted for, in case there is more than one officer of the same official designation to be nominated. *Provided*, That, in the case of Justice of the Supreme Court and District Judges the instruction shall be to vote for twice as many candidates as there are positions to be filled at the ensuing general election. *Provided, further*, That in the case of Precinct Committeemen the instruction shall be to write in the name of one qualified elector of the precinct for a member of the County Central Committee. To the right of the name of each candidate, and in the blank space and on the same line therewith, shall be two squares, above the first column of which shall be the words, "First Choice," and above the second column of which shall be the words, "Second Choice," except that the column of "Second Choice" squares shall not appear on the ballot in connection with the third column containing the names of the candidates for Justice of the Supreme Court and District Judges. The ballot herein provided for and required shall be in substantially the following form:

CONGRESSIONAL AND STATE CANDIDATES.			LEGISLATIVE AND COUNTY CANDIDATES.			NON-PARTISAN JUDICIAL CANDIDATES.	
U. S. Senator	1st Choice Vote for.....	2nd Choice Vote for.....	State Senator	1st Choice Vote for.....	2nd Choice Vote for.....	Justice Sup. Court	Vote for.....
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
Rep. in Congress			State Representative			John Doe	
John Doe			John Doe			District Judge	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
Governor			County Commissioner			John Doe	
John Doe			1st Dist.			John Doe	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
Lieut. Governor			County Commissioner			John Doe	
John Doe			2nd Dist.			John Doe	
John Doe			John Doe			John Doe	
John Doe			County Commissioner			John Doe	
Secretary of State			3rd Dist.			John Doe	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
State Auditor			Clerk District Court			John Doe	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
State Treasurer			Sheriff			John Doe	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
Attorney General			County Treasurer			John Doe	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
Supt. Public Inst.			Probate Judge			John Doe	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
Inspector of Mines			John Doe			John Doe	
John Doe			School Supt.			John Doe	
John Doe			John Doe			John Doe	
John Doe			John Doe			John Doe	
John Doe			County Assessor			John Doe	
			John Doe			John Doe	
			John Doe			John Doe	
			Coroner			John Doe	
			John Doe			John Doe	
			John Doe			John Doe	
			John Doe			John Doe	
			Surveyor			John Doe	
			John Doe			John Doe	
			John Doe			John Doe	
			Prosecuting Attorney			John Doe	
			John Doe			John Doe	
			Mem. Co. Cen. Com.			John Doe	

OFFICIAL PRIMARY BALLOT

----- Party -----
 County, Idaho. "Instructions: You may at your option vote for both first and second choice in case there are more than twice as many candidates as there are positions. To vote for a person for first choice make a cross (X) in the first square at the right of the name of the person for whom you desire to vote. To vote for a person for second choice make a cross (X) in the second square at the right of the name of the person for whom you desire to vote. You may vote for any qualified elector whose name is not printed on the ballot by writing the name of such person thereon under the appropriate heading and making a cross (X) in the proper square at the right of such name. Do not vote for the same person for both first and second choice. In voting for candidates for Justice of the Supreme Court and District Judge you should vote for twice as many candidates as there are positions to be filled at the ensuing general election. In the space provided therefor, write in the name of one qualified elector of your precinct for member of the County Central Committee. After marking the ballot hand it to a Judge to be placed in the ballot box for votes.

Laws 1913, page 351. Originally Laws 1909, page 200, amended by Laws 1911, page 571.

Cited: Adams vs. Lansdon, 18 Ida., 483; 110 Pac., 280.

Constitutionality: Prior to amendment, it was held that the provision of this section which required a voter to vote for both first and second choice if there are more than twice as many candidates as there are positions or offices to be filled, was not in conflict with Const. I, 19. Adams vs. Langsdon (1910), 18 Ida., 483; 110 Pac., 280; Ann. Cas. 1917C, 482, 485.

Writing in Names: The voter may write in as either first or second choice the name of any party or parties whose names are not printed upon the official ballot. Attorney General's opinion, 1909-1910, p. 88.

Voting on Judges, Optional: It is not mandatory upon the voter to vote for twice the number of candidates for district judge and supreme court justices as there are positions to be filled. The voter may, at his option, vote for double the number of candidates that there are positions to fill, or for any number less. Attorney General's opinion, 1913-1914, p. 36. (Sustained by Supreme Court in Eldridge vs. Utter, decided July 16, 1914.)

SEC. 15. *Manner of Voting.* Each vote shall be by ballot, printed as herein provided. When an elector offers to vote he shall call for the ballot of the political party of which he is a member, and shall have the right to receive the ballot of such party only. He may be challenged on the ground that he is not a member of the political party for whose ballot he asks,

and if challenged the following oath of affirmation shall be administered to him by one of the judges of election:

“Do you solemnly swear (or affirm) that you are a member of the-----party, that you intend to affiliate with such party at the next general election and that you intend in good faith to support its candidates generally.”

If upon being required to make such oath or affirmation by a Judge of Election he refuses to do so he shall not be permitted to receive a ballot nor allowed to participate in such primary election. Each voter shall upon receiving the ballot of his party retire to one of the booths and, without delay, mark the ballot received by him and fold it so that its face shall be concealed. He shall thereafter deliver said ballot received by him to one of the Judges of Election, and it shall be deposited by said Judge in the ballot box for votes. In the event said voter shall soil or deface the ballot he desires to vote, he shall at once return the ballot received by him and get a new ballot, and the election officer shall place the ballot returned in the ballot box provided for waste ballots.

Laws 1913, page 355. Formerly Laws 1909, page 203.

SEC. 16. *Who Shall Pay for Supplies.* All ballots, blanks and other supplies to be used at any primary hereby authorized, and the expenses necessarily incurred in the preparation for, or conducting of such primary, shall be paid out of the county treasury, in the same manner and with like effect, and by the same officers as in the case of general elections.

Laws 1909, page 203.

SEC. 17. *Qualification of Voters.* No person shall be qualified to vote at any primary unless he will be a qualified elector of the County and State at the next general election and at the time of the primary be duly registered in the precinct wherein he offers to vote.

Laws 1909, page 203.

SEC. 18. *False Swearing: Punishment.* Any person who willfully, knowingly or corruptly swears falsely to any material fact in a nomination paper, or relative to his qualifications as a voter upon registration or at a primary, shall be guilty of perjury, and upon conviction thereof shall be punished as provided in the Penal Code.

Laws 1909, page 203.

SEC. 19. *Forgery: Punishment.* Any person who shall write the name of another person as a signer or witness to a nomination paper, without his consent in presence of at least one witness, shall be deemed guilty of forgery, and upon conviction thereof shall be punished as provided in the Penal Code.

Laws 1909, page 203.

SEC. 20. *Time of Opening and Closing Polls.* The polls in the several election precincts on the day that any primary is held shall be open from ten o'clock in the morning until eight o'clock in the evening of said day. No adjournment or intermission whatever shall take place until the polls shall be closed, and the votes counted, and the result publicly announced.

Laws 1909, page 203.

SEC. 21. *General Laws Applicable.* The provisions of the general laws relative to the holding of elections, the appointment of judges and clerks of election, the solicitation of voters at the polls, the challenging of voters, the manner of conducting elections, the officers and duties thereof at elections, the counting of ballots and making returns of the results, the canvassing of returns, and all other provisions relating to general elections, shall apply to primaries in so far as they are applicable and consistent with the provisions of this Act, the intent of this Act being to place the holding of primaries for the nomination of candidates for office, under the protection and regulation of general laws now in force as far as possible, adding thereto the special features herein contained.

Laws 1909, page 203.

No Contest Provided: There is no provision for contesting a primary election. *Langsdon vs. S. Bd. of Canvassers* (1910), 18 Ida., 596, 605; 111 Pac., 133; Ann. Cas., 1913A, 703.

SEC. 22. *Sales of Liquor Prohibited on Election Day.* Any person who shall sell or give away any malt, spirituous, or vinous liquors on any day on which a primary is held, as required by this law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in the Penal Code.

Laws 1909, page 204.

Annotator's Note: This section is now inoperative by virtue of the enactment of the statewide prohibition law (Laws 1915, Ch. 28, p. 83) and the passage of the constitutional amendment in 1916 providing for statewide prohibition.

SEC. 23. *Duties of Secretary of State and County Auditors.* The Secretary of State shall provide copies of this law and transmit the same to the County Auditors of each county, at least sixty days before any primary election preceding a general election, and the County Auditors of each county shall send at least one copy thereof to the proper election officer in each precinct, together with the other election supplies, for use at such primary.

Laws 1909, page 204.

SEC. 24. *Expenditures of Money by Candidates.* No person shall in order to aid or promote his own nomination to an office under the provisions of this law, directly or indirectly, himself or through any other person, give, pay, expend or contribute, promise to give, pay, expend or contribute any money or other valuable thing or service, except for personal expenses. The words "personal expenses" as used in this law shall include only expenses directly incurred and paid by a candidate for traveling and for purposes directly incidental to traveling, and for writing, printing, and preparing for transmission any letters, circular, or other publication, whereby he states his position or views upon public or other questions; for cards, stationery and postage, and for the necessary expenses in hiring halls or other room for the purpose of holding public meetings to address the voters and others, upon public questions and matters relating to his candidacy; *Provided*, That no candidate for nomination to any office at any primary held under the provisions of this Act shall expend for personal expenses, or at all, in order to aid or promote his own nomination to such office more than twenty-five per cent of the yearly compensation or salary attached to such office, if he be a candidate for any State office, member of Congress or United States Senator; nor more than fifteen per cent if he be a candidate for District Judge; nor more than ten per cent if he be a candidate for any county office, except County Commissioner; nor more than One Hundred Dollars if he be a candidate for County Commissioner or member of the Legislature.

Laws 1911, page 576. Formerly Laws 1909, page 204.

Application: Under the provisions of this section a candidate is prohibited from expending more than 15 per cent of the yearly salary of the office which he seeks, and this expenditure includes the nomination fee.

Adams vs. Lansdon, 18 Ida., 483; 110 Pac., 280.

Candidate Defined: *Adams vs. Lansdon*, 18 Ida., 483; 110 Pac., 280.

Lawfulness of Expenditure: Under the direct primary law the purpose

of the expenditure by a candidate is the test of its lawfulness without reference to the time at which it was made.

Adams vs. Lansdon, 18 Ida., 483; 110 Pac., 280.

Payment of Nomination Fee: It is not intended that the candidate may not pay his nomination fee. Attorney General's opinion, 1909-1910, p. 84.

Publishing Candidacy: A person may make the statement that he is a candidate and publish it as it is certainly contemplated by the statute that the widest publicity be given to such. Attorney General's opinion, 1909-1910, p. 86.

When Candidacy Commences: A person becomes a candidate for office prior to the time of filing his nomination papers and as soon as he decides to run for office. Where one expects to be a candidate and appears at gatherings of his party, prior to his nomination and prior to the filing of his nomination papers, incidentally in furtherance of his interests as a candidate, he is required to include the expenses attendant thereon in the statement of expenses required by this section. Attorney General's opinion, 1913-1914, p. 36.

SEC. 25. *Same: Statement of Expenses.* Every candidate for nomination under the terms of this Act or any amendment thereto shall not more than twenty days after the day of holding of the Primary Election at which he is a candidate, file an itemized statement in writing, duly sworn to as to its correctness, with the officer with whom his declaration of candidacy or other nomination paper is filed, setting forth each sum of money and thing of value or any consideration whatever, contributed, paid or promised by him or any one for him, with his knowledge or acquiescence for the purpose of securing or influencing, or in any way affecting his nomination to said office. Said statement to set forth sums paid as personal expenses and stating fully the nature, kind and character of the expenses for which the sums were expended separately and the party or parties to whom the sums were paid and the purpose for which such payments were made; and in this statement all sums or other considerations promised and not paid shall be included. Such statements when so filed shall immediately be subject to the inspection and examination of any elector and shall be and become a part of the public records. And the County Auditor or Secretary of State must notify all candidates not later than ten days after the Primary Election that the filing of such statement is required.

Laws 1911, page 577. Formerly Laws 1909, page 204.

Construed: *Adams vs. Lansdon*, 18 Ida., 483; 110 Pac., 280. *Fuller vs. Corey*, 18 Ida., 558; 110 Pac., 1035.

SEC. 26. *Same: Neglect to File: Penalty.* Any candidate for nomination for any office under the terms of this Act who

shall fail, neglect or refuse to file with the proper officer the statement provided for in Section 25 within the time provided therein or who shall fail to fully set out and detail any and all sums of money or other thing of value or consideration expended, paid, contributed or promised as in Section 25 provided shall be guilty of a misdemeanor, and on conviction fined not less than one hundred (\$100.00) dollars and not more than five hundred (\$500.00) dollars and be imprisoned in the county jail not less than thirty (30) days and not more than six (6) months and shall be ineligible to become a candidate for the office for which he is then a candidate. Any candidate who shall fail to fully set out and detail such statement as hereinbefore required shall be and is hereby prohibited from having his name appear on the official ballot as a candidate and a vacancy shall thereby be created and exist for the nomination for which said person was a candidate and be filled as other vacancies under the terms of this Act.

Laws 1909, page 205.

Cited: Adams vs. Lansdon, 18 Ida., 483; 110 Pac., 280. Fuller vs. Corey, 18 Ida., 558; 110 Pac., 1035.

Auditor a Ministerial Officer: The auditor cannot sit in judgment on the candidate and adjudge him ineligible to have his name printed on the ticket on account of his failure to file an expense account either within the time or in the manner provided by the direct primary law. Fuller vs. Corey (1910), 18 Ida., 558; 110 Pac., 1035.

SEC. 27. *Improper Influences Prohibited: Penalty.* Any person who shall solicit, request, demand or receive directly or indirectly any money, intoxicating liquor, or any other thing of value, or promise thereof, either to influence his vote or to be used or under the pretense of being used to procure the vote of any other person or persons, or to be used at any poll or other place prior to or on the day of an election under this Act for or against any candidate for office, or for or against any measure or question to be voted upon at such election, shall be guilty of a misdemeanor and upon trial and conviction thereof be punished by a fine of not less than \$100.00 or more than \$500.00, or by imprisonment in the county jail of not less than thirty days nor more than six months, or by both such fine and imprisonment.

Laws 1909, page 205.

SEC. 28. *Same: Personal Expenses.* Any candidate for nomination for office under the provisions of this law who shall, directly or indirectly, himself or through another person, give, pay, expend or contribute, or promise to give, pay, expend

or contribute, any money or other valuable thing or service, except for personal expenses, as herein defined, in order to aid or promote his own nomination as a candidate for such office, shall be guilty of a misdemeanor, and upon conviction thereof he shall be punished as provided in the Penal Code, and shall be disqualified to become a candidate for the office for which he seeks to be nominated, or to hold said office should he be elected thereto; and it shall be a misdemeanor for any person, association or corporation to receive or accept any money or thing of value, promise or consideration for the support or advocacy of the nomination of any person other than as herein defined as "Personal Expenses."

Laws 1909, page 205.

Cited: Adams vs. Lansdon, 18 Ida., 483; 110 Pac., 280.

SEC. 29. *County Central Committees: Elections and Duties.* At the primary election held on the first Tuesday in September as herein provided, each voter may write in the space left on the ticket for that purpose, the name of one qualified elector of the precinct in which he is voting for a member of the County Central Committee of the party of which he is a member. The one receiving the highest number of votes shall be Committeeman of such precinct. The County Central Committee of each political party in each county shall consist of the Precinct Committeeman elected in the several precincts of the county at the primary election. Such Committee shall serve until their successors are elected in like manner at the following primary election. The County Central Committee so elected shall meet at the court house at the County Seat of each county at twelve o'clock M. on the 10th day after the primary election and organize by electing a Chairman, Secretary and such other officers as they may desire, who shall hold office during the pleasure of such committee, and at the same time and place they shall also elect one qualified elector of the same political party as a member of the State Central Committee of that party, and the State Central Committee shall consist of one such Committeeman from each county.

The County Central Committee of each county shall meet on the second Tuesday of June prior to the primary election and elect delegates belonging to the same political party to attend a State platform Convention of such party, to be held at the time and place herein provided. The number of delegates to be elected by such County Central Committee shall be a number equal to three times the number of State Representa-

tives to be elected from such county at the general election therein for that year. No proxies shall be allowed in such convention but the members of the delegation from each county in actual attendance shall be entitled to cast the full vote of such delegation on all questions arising in such convention.

The State Central Committee of each political party shall meet at the seat of State Government on the third Tuesday in September after the primary election, and organize by electing a Chairman, Vice-chairman, Secretary and other officers.

The County or State Central Committee shall have the power to make its own rules and regulations, may fill vacancies in said committees or authorize the Chairman to fill the same, fill vacancies on the ticket, provide for the nomination of candidates to fill such vacancies, provide for the nomination of Presidential Electors and for officers not required to be nominated as herein specified, and may perform all other functions inherent in such organizations by virtue of law or custom and not inconsistent with the terms of this law, the same as if this law had not been enacted.

The State Central Committee is hereby empowered to call State Conventions for the election of delegates to attend the National Conventions of their respective parties as may be provided by law.

The State Platform Convention of all political parties, subject to the provisions of this Act, shall meet at the seat of State Government at twelve o'clock M. on the last Tuesday in June before the primary election, and shall forthwith organize and by majority vote, adopt and promulgate the party principles and declarations of their respective parties, and shall, within three days after assembling file a copy of such platform with the Secretary of State, which copy shall be certified as the platform of such political party by the Chairman and Secretary of such convention.

Laws 1913, page 356. Originally Laws 1909, page 206, amended Laws 1911, page 577.

Precinct Officers: Precinct officers may, under the provisions of this section, be nominated in any reasonable way provided by a party committee organization.

Adams vs. Lansdon, 18 Ida., 483; 110 Pac., 280.

Convention Defined: "Convention," as used and employed in the direct primary election law, means an organized body of delegates or representatives assembled for the purpose of making nominations, and does not have reference to a mass meeting or assemblage of persons who represent themselves only, but is intended to be an assemblage or body selected or appointed by some class, body or party of electors as representatives of

the people, party or district making the selection or appointment. State ex rel. Spofford vs. Gifford (1912), 22 Ida., 613; 126 Pac., 1060.

Delegates: In the absence of a statute a party state central committee has such authority as may be given it by the authority creating it, or as is generally exercised by such committees, and may make up a temporary roll of delegates entitled to sit in the temporary organization of a state convention, but can only place on such roll legal delegates. Walling vs. Lansdon (1908), 15 Ida., 282; 97 Pac., 396; Ann. Cas., 1916B, 596.

Where the statute prescribes the method of electing delegates to participate in a convention, only those so elected are entitled to sit or participate, and the convention cannot convert a legal minority into a legal majority by permitting illegal delegates to vote with said legal minority. *Ib.*

Political Disputes: In determining factional disputes in a political organization and the legality of party primaries and conventions, the courts will go as far as the law goes, and protect all legal rights conferred by law upon all persons participating therein. Party conventions, committees or the party authority cannot decide or determine a matter which is regulated by law, and thereby abrogate the law or oust the courts of jurisdiction to determine such matter. Walling vs. Lansdon (1908), 15 Ida., 282; 97 Pac., 396; Ann. Cas., 1916B, 596.

Powers of State Central Committee: The state central committee has the right by resolution to delegate to each county central committee the power to provide the manner of electing delegates to the state convention. Any reasonable regulation or rule which the central committee may adopt would be valid. The state central committee may adopt the rules and continue the custom of holding the election that prevailed in the party prior to any law upon the subject. Attorney General's opinion, 1911-1912, p. 79.

Precinct Officers: Precinct officers may, under the provisions of this section be nominated in any reasonable way provided by a party committee or organization. Adams vs. Lansdon (1909), 18 Ida., 484; 110 Pac., 280; Ann. Cas., 1917C, 482, 485.

State Platform Convention: Number of Delegates: The number of delegates to which each county is entitled in the state platform convention is three times the number of state representatives to be elected at the general election of that year from such county. "State representative" is used in this section in contradistinction to the term "state senator," for which reason each county is entitled to three times as many delegates in the state platform convention as it has representatives in the lower house of the Legislature. Attorney General's opinion, 1913-1914, p. 37.

SEC. 30. *Platforms: How Promulgated.* If the nominees of the respective parties for County offices desire to adopt and promulgate any principles, declarations or pledges, they shall meet at the county seat of such county at twelve o'clock M., on the third Tuesday of September after the primary election, and forthwith organize and by a majority vote, adopt their platform and file the same with the County Auditor of such County within twenty-four hours thereafter, which said platform shall be duly certified by the chairman and secretary of such meeting.

Laws 1911, page 578. Formerly Laws 1909, page 207.

Cited: Adams vs. Lansdon (1910), 18 Ida., 483; 110 Pac., 280; Ann. Cas., 1917C, 482, 485.

SEC. 31. *Candidate Nominated on More Than One Ticket.* If a voter shall write upon his ticket the name of any person who is a candidate for the same office upon some other ticket, said ballot shall be counted for such person as a candidate of the party upon whose ticket his name is written and shall in no case be counted for such person as a candidate upon any other ticket. In case a person is nominated upon more than one ticket, he shall file with the proper officer a written declaration indicating the party designation under which his name is to be placed on the official ballot.

Laws 1909, page 207.

SEC. 32. *Canvassing Votes.* The votes at such Primary Election shall be canvassed in the manner provided by the General Election laws as nearly as practicable. The same officers shall be used at Primary Elections as provided for General Elections. When ballots are taken from the ballot boxes, the ballots of each party shall be placed in a separate pile and when the canvass is completed the ballots of each party shall be securely fastened together. The Judges shall count the ballot of each party separately and the Clerks shall carefully enter the number of both first and second choice votes for each candidate on the tally sheets provided therefor, and when the count is completed shall ascertain the total vote cast for each candidate, and publicly announce the result and post the same at the front of the polling place.

Laws 1911, page 579. Formerly Laws 1909, page 207.

Election Officers: In those precincts where two sets of officers work during general election the same number should be appointed for primary election, Sec. 443. Attorney General's opinion, 1911-1912, p. 48.

SEC. 33. *Tally Sheets: Form.* Two sets of tally sheets for each political party having candidates to be voted for at a primary election shall be furnished with the other supplies, and shall be practically as follows:

Each tally sheet, or the first page of each tally book, shall be headed, "Tally sheet for _____
(Name of political party), _____ (Name of
County), _____ (Name of election
precinct), _____ (for primary held),
(Date). The names of candidates shall be placed on the tally
sheets in the order in which they appear on the official ballots,
and in each case shall have the proper party designation at the
top thereof, excepting for Justice of the Supreme Court and

District Judges; in other particulars said tally sheets shall be of similar form to those used at the general election.

Laws 1913, page 357. Formerly Laws 1909, page 207.

SEC. 34. *Candidates: Who Nominated.* The person receiving the highest number, and not less than forty per cent of the first choice votes at a primary election as the candidate of the party for an office shall be a candidate of that party for such office, and his name as such candidate shall be placed on the official ballot at the following general election; *Provided*, That if no candidate at the primary election shall receive as many as forty per cent of the first choice votes, then and in that event a canvass shall be made of the second choice votes received by the candidates for said office and said second choice votes shall be added to the first choice votes received by each candidate for such office, and the candidate receiving the highest number of first and second choice votes shall be the nominee for such office of the party nominating him, and his name as such candidate shall be placed on the official ballot at the following general election. *Provided*, That if no second choice votes are cast for any candidate for such office the person receiving the highest number of the first choice votes for such office shall be the candidate of his party for that office.

Candidates for Justice of the Supreme Court and District Judges shall be determined as follows: The number of candidates equaling the number of judicial positions to be filled who receive the highest number of votes at the primary election, and an equal number of candidates for such positions (provided there are such candidates) who receive the next highest number of votes, shall be the candidates for such respective offices, and their names shall appear on the general election ballot under the designation of such respective offices. The names of all candidates for Justice of the Supreme Court and District Judges to be voted for in each county shall be placed on the general election ballot in a separate column to the right of the columns used for the nominees of political parties and at the top of each column shall be placed the words, "Non-partisan Judicial Candidates." Immediately under such heading shall be printed the following instructions to voters: "To vote for a person make a cross (X) in the square at the right of the name of the person for whom you desire to vote."

Under the headings "For Justice of the Supreme Court" and "For District Judge" shall be placed respectively the names

of all candidates entitled to be voted for to fill such offices, and under such designations and immediately preceding such names shall appear the following: "Vote for-----," giving the number of such offices to be filled at such general election.

Laws 1913, page 358. Originally Laws 1909, page 208, amended Laws 1911, page 579.

Construed: The legislative intention is apparent that if possible each nominee should be selected by a majority vote, first by a majority of the first choice votes, then by a majority of the first and second choice votes added together; but in case no candidate has a majority of the first choice votes or a majority of the first and second choice votes added together, then the candidate receiving a plurality of the first and second choice votes should be the nominee. *Adams vs. Lansdon* (1910), 18 Ida., 483, 110 Pac., 280; *Ann. Cas.*, 1917C, 482, 485.

SEC. 35. *Same: Tie: Determination.* Should two or more candidates of a political party receive the same number of votes for the same office, the tie shall be determined by lot by the candidates; if for a county office in presence of the county canvassing board, and if for a district or State office or member of Congress before the State canvassing board.

Laws 1909, page 208.

Cited: *State ex rel. Spofford vs. Gifford* (1912), 22 Ida., 613; 126 Pac., 1060.

SEC. 36. *Ballots: Clerk of County Commissioners to Retain.* After all ballots have been counted they shall be locked in a ballot box, and the returns for all parties, showing the number of first and second choice votes received by each candidate, shall be securely sealed in an envelope and sent to the clerk of the board of county commissioners.

Laws 1909, page 208.

SEC. 37. *Canvass by County Commissioners.* As soon as all the returns are received and not later than the eighth day after a primary election, the Board of County Commissioners shall meet as a Board of Canvassers, and canvass and make abstracts of the votes for the respective candidates for the different offices, and shall certify to the Secretary of State the number of first and second choice votes received in such county by all candidates for United States Senator, Representatives in Congress, State and District offices. Said board shall certify to the County Auditor the names of persons nominated by the different parties for the respective offices to be voted for at the ensuing general election in such county only.

Laws 1913, page 359. Formerly Laws 1909, page 208.

Cited: State ex rel. Spofford vs. Gifford (1912), 22 Ida., 613; 126 Pac., 1060.

Auditor's Duty: Where a candidate for nomination has been regularly certified by the canvassing board to the county auditor as having received the nomination of his party for a county office, the duty of causing the name of such nominee to be printed on the official ballot to be used at the succeeding general election is purely a ministerial act. Fuller vs. Corey (1910), 18 Ida., 558; 110 Pac., 1035.

SEC. 38. *State Board of Canvassers: Duties.* For the purpose of canvassing the result of the primary held as herein provided, the State Board of Canvassers shall meet at the office of the Secretary of State, at 10 o'clock in the forenoon of the fifteenth day thereafter. Said Board shall canvass the votes for the candidates for United States Senator, Representatives in Congress, State and District offices, and shall certify the nominees of the different parties therefor to the Secretary of State, not less than thirty-five days before the date of the general election ensuing. The said Board shall also certify the candidates for Justice of the Supreme Court and District Judges who are entitled to have their names placed on the official ballot for the general election.

Laws 1913, page 359. Formerly Laws 1909, page 209.

SEC. 39. *Vacancies: How Filled.* Vacancies occurring after the holding of any primary may be filled by the party committee of the State, district or county, as the case may be, or by a convention of the party duly organized, as may be most agreeable to the party organization.

Laws 1909, page 209.

Failure to Nominate Does Not Create Vacancy: Where no person's name was filed for nomination before the primary election, this does not create a vacancy within the meaning of the primary election law, and the central committee would have no power to fill such position by appointment so as to entitle the name of a person nominated by said committee to be placed upon the party ticket at the general election. Attorney General's Opinion, 1911-1912, p. 34.

SEC. 40. *U. S. Senators: Vote to Be Certified to Legislature.* Laws 1909, page 209. Repealed by implication. See Seventeenth Amendment to the Federal Constitution and Laws 1913, page 433, providing for direct election of U. S. Senators.

SEC. 41. *Candidates for Legislature May File Declaration of Choice for U. S. Senator.* Laws 1909, page 209. Repealed by implication. See Seventeenth Amendment to Federal Constitution and Laws 1913, page 433, providing for direct election of U. S. Senators.

SEC. 42. *U. S. Senators: Election.* That from and after the ratification of the amendment to the Constitution of the United States providing for the election of United States Senators by popular vote, at every general election last preceding the expiration of the term of office of a United States Senator from the State of Idaho, the primary and election laws shall apply to the office of United States Senator in the same manner as they apply to the office of Representatives in Congress.

The officers charged with the duty of preparing primary and election ballots shall enter the names of candidates for nomination for United States Senator upon the primary election ballot and the nominees for said office upon the ballot for the general election.

Upon the primary ballot, the names of candidates for United States Senator shall be arranged and printed as are names of candidates for Representative in Congress, but in order of precedence upon the ballot immediately preceding the names of candidates for Representative in Congress.

Upon the election ballot the names of nominees for United States Senator shall be printed immediately above the horizontal line preceding the names of nominees for Representative in Congress.

It shall be the duty of the canvassing board of precinct, county and state, to canvass and make returns upon the votes cast for United States Senator in the same manner as is provided by law with respect to candidates for Representative in Congress.

Laws 1913, page 433.

SEC. 44. *Registration.* The provisions of section 396 shall apply to the holding of primary elections and the registration of voters, and the registrar shall prepare check lists and deliver them, together with the election register, to the judges of election, as therein provided to be done at general elections, and it shall be the duty of the judges of election to return the electors' register to the registrar on the following day after the primary election, and the registrar shall thereupon continue to register voters for the general election in all respects as provided by section 396 for the registration of voters.

Historical: Laws 1909, p. 196, H. B. 16, Sec. 44. While it may have been the intention of the Legislature to repeal this section by Laws 1913, Ch. 92, Sec. 21, p. 380, its revival seems to be intended under Laws 1917, Ch. 44, p. 96, and is justified by Section 21 of this Chapter.

Annotator's Note: This section has been given an arbitrary number by the compiler.

CHAPTER VIII.

NOMINATIONS.

Section	Section
382. Nominations by conventions.	388. Time for filing certificates: Publication of nominations.
383. Certificate of nomination.	389. Names of candidates to be certified by Secretary of State.
384. Certificates to be filed where.	390. Declination of nomination.
385. Nominations other than by convention.	391. Mode of filling vacancies.
386. Restrictions on independent nominations.	392. Use of stickers on tickets.
387. Preservation of certificates.	

SEC. 382. *Nominations by Convention.* Any convention or primary meeting, as hereinafter defined, held for the purpose of making nominations to public office, and also electors to the number hereinafter specified, may nominate candidates for public office to be filled by election within the State. A convention or primary meeting, within the meaning of this chapter, is an organized assemblage of electors or delegates representing a political party or principle.

Cross Reference: This chapter has been superseded in so far as the larger political parties are concerned by the preceding chapter, the direct primary law.

Cited: Walling vs. Lansdon (1908), 15 Ida., 282; 97 Pac., 396. State ex rel. Spofford vs. Gifford (1912), 22 Ida., 613; 126 Pac., 1060.

What Constitutes a Convention: This section does not prescribe the number of people requisite to constitute a convention or primary meeting under the statute.

Baker vs. Scott, 4 Ida., 596; 43 Pac., 76.

"Convention" as used and employed in the direct primary election law, means an organized body of delegates or representatives assembled for the purpose of making nominations, and does not have reference to a mass meeting or assemblage of persons who represent themselves only, but is intended to be an assemblage or body selected or appointed by some class, body or party of electors as representatives of the people, party or district making the selection or appointment.

State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

SEC. 383. *Certificate of Nomination.* All nominations made by such convention or primary meeting shall be certified as follows: The certificate of nomination, which shall be in writing, shall contain the name of each person nominated, his residence, his business, and the office for which he is named, and shall designate in not more than five words, the party or principle which such convention or primary meeting represents, and it shall be signed by the presiding officer and secretary of such convention or primary meeting, who shall add to their signatures their respective places of residence and their busi-

ness. Such certificates, made out as herein required, shall be delivered by the secretary or president of such convention or primary meeting to the Secretary of State or to the county auditor, as hereinafter required.

Cited: Walling vs. Lansdon (1908), 15 Ida., 282; 97 Pac., 396. State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

SEC. 384. *Certificates to Be Filed Where.* Certificates of nominations of candidates for offices to be filled by the electors of the entire State, or of any division or district greater than a county, shall be filed with the Secretary of State. Certificates of nomination for county and precinct officers shall be filed with the auditors of the respective counties wherein the officers are to be elected. Certificates of nomination for municipal offices shall be filed with the clerks of the respective municipal corporations wherein the officers are to be elected.

Cited: Cunningham vs. George, 3 Ida., 456; 31 Pac., 809. State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

Mandamus: For application for a writ of mandate to compel the secretary of state to file a certificate of nomination, see Walling vs. Lansdon (1908), 15 Ida., 282; 97 Pac., 396.

SEC. 385. *Nominations Other Than By Convention.* Candidates for public offices may be nominated, otherwise than by convention or primary meeting, in the following manner: A certificate of nomination, containing the name of a candidate for the office to be filled, with such information as is required to be given in certificate provided for in Section 383, shall be signed by electors residing within the district or political division in and for which the officer or officers are to be elected, in the following numbers: The number of signatures, when the nomination is for a State office, shall not be less than three hundred; for a district office, or subdivision of the State, including two or more counties, the number of signatures shall not be less than one hundred and fifty; for a county office not less than fifty; and for a township, precinct or ward office not less than ten; *Provided*, That the said signatures need not all be appended to one paper. Each elector signing a certificate shall add to his signature his place of residence and his business. Such certificates may be filed as provided for in Section 384, in the same manner and with the same effect as a certificate of nomination made by a party convention or primary meeting: *Provided*, That the registrar of each precinct or ward, as the case may be, shall certify to the Secretary of State, the

county auditor or the clerk of the municipality, as the case may be, that all the signers of the certificates are qualified electors and registered according to law for the ensuing election.

Laws 1913, page 378, but original wording "the registrar of each precinct or ward, as the case may be," in the last proviso revived in Laws 1917, Ch. 44, p. 96, in substitution for "clerk of the District Court" in the amendment.

Cited: Walling vs. Lansdon (1908), 15 Ida., 282; 97 Pac., 396. McDougall vs. Sheridan (1913), 23 Ida., 191, 203; 128 Pac., 954.

Independent Candidates: Where a petition nominating a candidate for office is signed by a sufficient number of electors and is filed in due form within the time required by law, the candidate named thereon is entitled to have his name appear on the official ballot, but not upon the ticket of any particular party.

Phillips vs. Curtis, 4 Ida., 193; 38 Pac., 405.

Same: Number of Signers: Since members of the Legislature are not officers required to be voted for by the electors of the entire state, they do not come within the class who, when nominated as independent candidates, require a petition to be signed by 300 electors.

Phillips vs. Curtis, 4 Ida., 193; 38 Pac., 405.

Application: The statutes of this state do not permit the nomination of candidates for presidential electors or congress by petition. The above section does not include such officers.

State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

SEC. 386. *Same: Restrictions on Independent Nominations.* No certificate of nomination shall contain the name of more than one candidate for each office to be filled and, where the certificate of nomination is signed by electors under the provisions of the preceding section, there shall be a separate certificate for each candidate for office. No person who voted at a primary election at which a candidate for any office was nominated, shall be allowed to join in nominating, under the provisions of the preceding section, a candidate for such office to be voted for at the same general election, and no person who voted at a general primary at which a candidate for any office was nominated, shall accept a nomination made under the provisions of the preceding section for such office to be voted for at the same general election. No person shall join in nominating more than one person for each office to be filled, and no person shall accept a nomination to more than one office. The name of no more than one person nominated under the provisions of the preceding section, shall be placed in any one column on the official ballot for the general election and no party designation shall be used for any candidate or candidates so nominated.

Laws 1913, page 360.

Cited: State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

Signers of Petition: Persons who participated in nominating one person for an office at a political convention of one party, cannot afterwards sign a petition nominating another person for the same office.

Phillips vs. Curtis, 4 Ida., 193; 38 Pac., 405.

SEC. 387. *Preservation of Certificates.* The Secretary of State, the auditors of the several counties, and the clerks of the several municipal corporations, shall cause to be preserved, in their respective offices, for one year, all certificates of nominations filed in their respective offices under the provisions of this chapter. All such certificates shall be open to public inspection under the proper regulations to be made by the officers with whom the same are filed.

SEC. 388. *Time for Filing Certificates.* Certificates of nomination to be filed with the Secretary of State shall be filed not more than sixty days and not less than thirty-five days before the day fixed by law for the election of the persons in nomination. Certificates of nomination herein directed to be filed with the county auditor shall be filed not more than sixty days and not less than twenty-five days before election. Certificates for the nomination of candidates for municipal offices shall be filed with the clerks of the respective municipal corporations not more than thirty days and not less than ten days previous to the day of election: *Provided*, That the time specified for filing certificates of nominations, as provided in this section, shall not be held to apply to nominations for special elections to fill vacancies caused by death, resignation or otherwise.

Application: Although Section 452, Revised Statutes (Section 339, Revised Codes), provides that the Secretary of State shall keep his office open until 4 o'clock p. m., if the Secretary sees fit to keep his office open for the transaction of business after 4 o'clock, a certificate of nomination presented to him on the thirty-fifth day before election day at 4:30 p. m., is presented within the time prescribed by this section and should be filed. Grant vs. Lansdon, 15 Ida., 342; 97 Pac., 960.

SEC. 389. *Names of Candidates to be Certified by Secretary of State.* Not less than thirty days before an election to fill any public office, the Secretary of State shall certify to the county auditor of each county within which any of the electors may by law vote for candidates for such office, the name and description of each person nominated for such office, as specified in the certificates of nomination filed with the Secretary of State.

SEC. 389a. *Publication of Nominations.* As soon as the county auditor shall have received the information required

to be certified to him by the Secretary of State as provided in Section 389 of the Revised Codes of Idaho, it shall be his duty to compile in ballot form the information contained in said certificate together with the information contained in all certificates of nomination to county and precinct officers which may be filed with him as the nominees to be voted on at the next succeeding general election and cause the same to be published for two (2) weeks in not less than two (2) nor more than four (4) newspapers published within the county. Said publication shall be, as far as possible, in the form in which such nomination shall appear upon the official ballots. In the case of municipal elections such publication of the names of candidates for municipal officers shall be made in newspapers which are published within the municipality where the election is to be held. In making said publications county auditors shall keep in view the object of giving information as far as possible to the largest number of voters of all political parties.

As soon as the city or village clerk shall have received the certificates of nomination for the city or village offices as are required to be filed with him under Section 388 of the Revised Codes of Idaho, it shall be his duty to compile in ballot form the information contained in said certificates and cause the same to be published for one (1) week in two (2) newspapers of general circulation in such city or village.

Laws 1909, page 297.

SEC. 390. *Declination of Nomination.* Whenever any person nominated for public office, as in this chapter provided, shall, at least thirty days before election, except in the case of municipal elections, in a writing signed by him, and certified to by the registrar of the precinct where the person nominated resides, notifying the officer with whom the certificate nominating him is by this chapter required to be filed, that he declines such nomination, such nomination shall be void. In municipal elections such declination must be made at least ten days before the election.

Mandatory Provision: The provision of this section requiring declination of nominees to be filed at least thirty days before election is mandatory, and the auditor may refuse to accept a declination presented for filing within thirty days of the election.

Napton vs. Meek, 8 Ida., 625; 70 Pac., 945.

SEC. 391. *Mode of Filling Vacancies.* Should any person so nominated die before the printing of the tickets, or decline

the nomination as in this chapter provided, or should any certificate of nomination be or become insufficient or inoperative from any cause, the vacancy or vacancies thus occasioned may be filled in the manner required for original nominations. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, such committee may, upon the occurring of such vacancies, proceed to fill the same. The chairman and secretary of such committee shall thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination. The certificate so made shall be executed in the manner prescribed for the original certificate of nomination, and shall have the same force and effect as an original certificate of nomination. When such certificate shall be filed with the Secretary of State, he shall, in certifying the nominations to the various county auditors, insert the name of the person who has thus been nominated to fill a vacancy in place of that of the original nominee. And in the event that he has already sent forth his certificate, he shall forthwith certify to the auditors of the proper counties the name and description of the person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents, and the name of the person for whom such nominee is substituted.

Cited: Baker vs. Scott, 4 Ida., 596; 43 Pac., 76.

SEC. 392. *Use of Stickers on Tickets.* When any vacancy occurs before election day and after the printing of the tickets, and any person is nominated according to the provisions of this chapter to fill such vacancy, the officer whose duty it is to have the tickets printed and distributed, shall thereupon have printed a requisite number of stickers, and shall mail them by registered letter to the judges of election in the various precincts interested in such election. The distributing clerk, whose duty it is made by the provisions of this title to distribute the tickets, shall affix such stickers in the proper place on each ticket before it is given out to the elector.

Cross Reference: Mutilation of ballot by voter prohibited, Sec. 408, Revised Codes.

Stickers: An independent candidate cannot use stickers or printed slips upon which his name is written to be attached to the official ballot by the individual voter. This section provides for the use of stickers in case a person, after the printing of the ballot, is nominated to fill a vacancy. Stickers can be used in no other cases than as specified by the statute. Attorney General's opinion, 1913-1914, p. 30.

CHAPTER IX.

REGISTRATION OF ELECTORS.

Section	Section
393. Appointment of registrars.	pers.
394. Registration notices, books and supplies.	398. Registrar to estimate tickets required.
395. Oath of registrar.	399. Transfer certificates.
396. Registration of voters: elector's oath: check lists.	400. Mandate to compel registration.
397. Preservation of registrar's pa-	401. Compensation of registrar.

Annotator's Note: Sections 393-401 of the Revised Codes were repealed in 1913 and a law enacted providing a permanent system of registration. This was repealed in 1917 and the provisions of Sections 393-401, Revised Codes, practically reinstated. For that reason the sections contained in this chapter have been arbitrarily numbered to conform to the numbering of the old sections in the Revised Codes.

SEC. 393. *Appointment of Registrars.* The board of county commissioners of each county of the State must, at its regular meeting in April, next preceding each general election, appoint a registrar for each election precinct in the county, who must be a qualified elector, resident of such precinct, and otherwise a proper person and qualified to perform the duties of such office, and such registrar may hold his office until his successor is appointed and qualified. When any registrar fails to act, or the office becomes vacant, the said board, if in session, must appoint another registrar; or if said board is not in session, the chairman of the board must appoint; and should a registrar not be appointed, or from any cause, none should act, the electors may, on the second Saturday of May at one o'clock p. m. next preceding any general election to which this title is applicable, meet at the place in the precinct appointed by said board for the holding of such election, or should the board fail to appoint a place, then at the place where the last general election was held, and elect a registrar.

Laws 1917, Ch. 44, Sec. 1, p. 96.

Liberal Construction: Statutes prescribing duties of election officers relative to registering voters should not be so construed as to make right of citizens to vote depend upon strict observance of law. *Huffaker vs. Edgington* (1917), 30 Ida., 179; 163 Pac., 793.

SEC. 394. *Registration Notices, Books and Supplies.* The said board must, prior to the first day of May next preceding any general election, cause notice to be given for not less than fifteen days, by publication in some newspaper published in the county, if there be one, otherwise by at least three notices posted up in different parts of the county, one of which must be at the court house door, giving the names and general description of election precincts, the name of the registrar for each precinct, and the time during which registration may be made, which shall be, for every general election, during each Saturday including and from the first day of May, to and including the Saturday next preceding the primary election, when such registration books shall be closed until the Saturday following such primary election, when the same shall be re-opened for registration of electors until nine o'clock p. m. on the Saturday next preceding the general election. At the time of or before giving such notice, the board must furnish to each registrar two books, one to be known as the "election registrar" for the registry of qualified electors, and the other for the registry of rejected applicants. Each of such books must be ruled and headed substantially as follows:

Number
Name of Elector
Dates of Registration or Dates of Rejection
Age
Where Born
Description of Residence
Certificate of Naturalization Exhibit—Yes or No
Remarks

At the same time the said board must furnish to the registrar the blank notices, certificates, oaths and all other blanks, books, and papers, needed and required to perform the duties of his or her office as such registrar.

Laws 1917, Ch. 44, Sec. 2, p. 97.

Cited: Shoshone Highway Dist. vs. Anderson (1912), 221, 109; 125 Pac., 219.

Powers of Registrar: Registrar may give notice of days other than certain Saturdays preceding special election, on which he will receive applications for registration. Gillesby vs. Comrs. of Canyon Co. (1910), 17 Ida., 586; 107 Pac., 71; Ann. Cas., 1913B, 17, 23, 24, 1916D, 22. Nims vs. Gilmore (1910), 17 Ida., 609; 107 Pac., 79.

Notice: One notice is all that is necessary provided the notice sets out fully when registration may be had for the primary election and also the general election. Attorney General's opinion, 1911-1912, p. 48.

SEC. 395. *Oath of Registrar.* Before entering upon the duties of his office, each registrar must take and subscribe, before any officer authorized to administer oaths, the official oath required of all officers acting under the laws of the State of Idaho, which, when so taken and subscribed, must be by him filed with the clerk of the board of county commissioners, and said registrar may thereupon register his own name in the elector's register.

Laws 1917, Ch. 44, Sec. 3, p. 98.

SEC. 396. *Registration of Voters: Elector's Oath: Check Lists.* He must also, prior to the time of commencement of registration, post notices in at least three public places in different parts of his precinct, most likely to give notice to the inhabitants thereof, giving the time, days and hours during, and the place at which he will be ready to receive and hear applications for registration, and he must thereafter, on the days named by him in said notice, be at the place designated, from the hours of nine o'clock a. m. to five o'clock p. m., and from seven o'clock p. m. to nine o'clock p. m., and receive and register the names of all persons applying, who are, or will be on the day of election for which registration is made, entitled to vote thereat. He must, also, on any other day of the week, except holidays, during said time of registration, register any such elector who may find and apply to him at his place of registration, and he may, at any time or place during said time of registration, register any such elector of his precinct. He may, at any time, examine under oath any applicant as to his qualifications, and he must examine and permit any qualified elector of his county to examine any applicant for registration,

either when such applicant is not known to the registrar to be a qualified elector, or when any such qualified elector challenges such applicant and specifies his cause of challenge.

When any applicant claims to be a naturalized citizen the production by him of his certificate of naturalization is prima facie evidence of citizenship. If he cannot produce such certificate, he must state, under oath, positively, the time when, and place and court where, he was naturalized; and he must by his own, or other testimony, make it satisfactorily appear to such registrar that he has been duly naturalized and that his certificate thereof has been lost, destroyed or is beyond his control and thereupon he must be deemed a citizen, and entitled to registration if otherwise qualified. All examinations before such registrar must be reduced to writing, when desired by such applicant, challenging elector or registrar. Such examination for any one applicant shall not exceed one-half hour, without the consent of the registrar. If any applicant refuses to answer all questions, give all information under his control, take all other oaths, and do all other acts and things required of him by law, his application must be rejected by the registrar.

The registrar must, before he registers any applicant, require him to take and subscribe the oath to be known as the "Elector's Oath," which is as follows:

ELECTOR'S OATH.

I do swear (or affirm) that I am a citizen of the United States, of the age of twenty-one years, or will be the----- day of-----, A. D. 19____, (naming the date of the next succeeding election); that I have (or will have) actually resided in this State for six months, and in this county for thirty days next preceding the next ensuing election (in case of any election requiring a different time of residence to make it); that I have never been convicted of treason, felony, embezzlement of public funds, bartering or selling or offering to barter or sell my vote, or purchasing or offering to purchase the vote of another, or other infamous crime, without thereafter being restored to the rights of citizenship; that I will not commit any act in violation of the provisions in this oath contained; that I am not now registered or entitled to vote at any other place in this State; that I do regard the Constitution of the United States and the laws thereof, and the Constitution of this State and the laws thereof, as interpreted by the Courts, as the supreme law of the land; (when made before a judge of

election add: "and I have not previously voted at this election,") so help me God.

(Signed) _____

Subscribed and sworn to before me this _____
day of _____, A. D. 19_____
Registrar of _____Precinct, _____
County, Idaho.

When the registrar admits any one to registration he must enter, in the proper column of the "Elector's Register," the number, the name in full (except any middle name, which may be by initial), date of registry, age, place of nativity and residence of the elector so admitted. The residence must be so described by giving the house, street, ward, or part of the precinct he resides in, that it may be easily found; also it shall be stated, if a naturalized citizen, whether or not he produced his certificate, and the registrar may, in the column of remarks, add any pertinent notes.

He must also enter the names, with statements similar to the above, of all persons who are refused registration, in the books kept for that purpose, and therein state the reason of such refusal.

During the time between the last day of registration and the day of election each registrar must prepare for his "Elector's Register" two "check lists" of all the names registered by him, arranged alphabetically according to the surname, placing on the left of the name the same number it bears in the "Elector's Register," and on the right of the column of names, a blank column in which to indicate by the word "voted" when the elector votes; said "check lists" must have a heading showing for what election it was prepared and used; they must be carefully prepared without interlineations, in legible writing or typewriting, certified and sworn to by the registrar, and, not later than the day next preceding the election, he must deliver to one of the judges of election of his precinct his "Elector's Register," and the register containing the names of those refused registration, and to each of the other two judges, who are not of the same political party, a copy of said "check lists," and such judges must, as the electors vote, write the word "voted" opposite their names in said "check lists," while the clerks of election keep the record of the electors voting as elsewhere provided in this title.

Cross Reference: For duties of registrar with reference to primary elections, see Sec. 44, Ch. 7.

Cited: Wilson vs. Bartlett (1900), 7 Ida., 271; 62 Pac., 416.

Place and Time of Registry: The place of registry is immaterial and an applicant may be registered at any place and time during the period provided by law. Registration on Saturday or any other day at any place would be valid. Attorney General's opinion, 1905-1906, p. 142.

The days on which registrars will hear applications for registration are left entirely to the discretion of the registrar. Gillesby vs. Comrs. of Canyon Co. (1910), 17 Ida., 586; 107 Pac., 71; Ann. Cas., 1913B, 17, 23, 24, 1916D, 62. Nims vs. Gilmore (1910), 17 Ida., 609; 107 Pac., 79.

Power to Administer Oath: This section confers upon the registrar the power to administer oaths. T. vs. Anderson (1889), 2 Ida., 573; 21 Pac., 417; 24 A. S. R., 678.

Registration for Each Election: Registrars are not permitted to transfer the names registered at the last previous election to their current lists. Every elector must register anew for each election. Attorney General's opinion, 1905-1906, p. 142.

Specifications for Register: The law specifically requires that the registrar note the age of voter in his book, and it would not be sufficient to note simply the statement in the oath of being over 21 years of age. Attorney General's opinion, 1905-1906, p. 148.

SEC. 397. *Preservation of Registrar's Papers.* All persons offering to vote at any election are subject to challenge, as provided by the election laws, but registration of any elector's name is prima facie evidence of his right to vote, and no person shall vote unless he is first registered.

Each registrar, after so preparing his "check lists," must arrange the "Elector's Oaths" taken before him in the order the names of the electors who took them appear upon the "check lists," and attach them together, putting the names under each letter in a separate package; and all such oaths, certificates and written testimony taken by the registrar, and the registrar books of electors and persons rejected, delivered to said judges, must all be transmitted, and other election returns, to the clerk of the board of county commissioners, who must preserve the same for at least one year.

Laws 1917, Ch. 44, Sec. 5, p. 101.

Cited: Wilson vs. Bartlett (1900), 7 Ida., 271; 62 Pac., 416.

SEC. 398. *Registrar to Estimate Tickets Required.* Each registrar must, twenty-five days previous to the day of the primary election and twenty-five days prior to the general election, notify the clerk of the board of county commissioners of his county of the probable number of tickets required for the precinct of which he is registrar, basing his estimate upon the number of registered electors, allowing a sufficient number for contingencies at each election.

Laws 1917, Ch. 44, Sec. 6, p. 101.

SEC. 399. *Transfer Certificates.* When a registered elector desires to remove his residence from a precinct where he is registered, he may, at any time before the registrar has closed his registration books, apply to such registrar to have his name stricken from the register, and the registrar must then strike the name of such elector from the register, and shall deliver to said elector a transfer certificate substantially in the following form, to-wit:

TRANSFER CERTIFICATE.

"This certifies that _____ was on the _____ day of _____, 19____, duly registered in _____ Precinct, in the County of _____, State of Idaho; and that at his own request his name has been this day erased from the official register of said precinct.

"Witness my hand this _____ day of _____, 19____.

"Registrar of _____ Precinct, _____ County, Idaho."

Such transfer certificate shall entitle the elector named therein to be registered in any other precinct in the same county, if it be filed with the registrar of such other precinct at any time before the close of the last day of registration.

Any elector who has taken out a transfer certificate as in this section provided, may personally file the same with the registrar of the precinct in which he desires to register and vote, or he may send his transfer certificate to such registrar by registered mail. If the elector file his transfer certificate personally, he shall be treated as any other applicant for registration; if the elector send his transfer certificate by mail to the registrar, his name shall be entered in the official register and check lists; and on the check lists, opposite the name of each elector who has filed a transfer certificate personally, the registrar shall enter the words, "Registered by certificate," and opposite the name of each elector who has sent his transfer certificate by mail the registrar shall enter, "Registered by certificate by mail," and the registry number appearing upon the envelope in which the transfer was sent to him. Upon the day of election, when an elector registered by transfer certificate by mail offers to vote, the judges of election, or one of them, shall, before receiving and depositing the ballot, administer to such elector the same oath that is required to be taken before registrars by all electors applying for registration,

and shall require such elector to exhibit the original registered letter receipt issued to him when he mailed his transfer certificate to the registrar, and the number on the check list opposite the name of such elector must correspond with the number on the registered letter receipt.

Laws 1917, Ch. 44, Sec. 7, p. 101.

Transfer Necessary to Vote: If registered in one precinct, a voter cannot vote in another precinct in the same county, nor register therein, without first obtaining a transfer certificate. Attorney General's opinion, 1913-1914, p. 37.

Transfer to Another County: While there is no specific provision for transfer from one county to another, an elector, who after registration in one county, establishes residence in another county, should secure transfer certificate, present it at his new place of residence and take the elector's oath anew. Attorney General's opinion, 1911-1912, p. 71.

SEC. 400. *Mandate to Compel Registration.* Should any registrar at any time refuse to register any applicant, such applicant may apply to the District Court, or the Judge thereof, for a writ of mandate to compel the registrar to register him, and the provisions of the Code of Civil Procedure in similar proceedings are applicable.

Laws 1917, Ch. 44, Sec. 8, p. 102.

Cross Reference: Mandate: Secs. 4976-4989, Revised Codes.

SEC. 401. *Compensation of Registrar.* The several registrars shall receive such compensation as shall be allowed by the board of county commissioners, which in no case shall exceed twenty-five cents for each name registered, and the compensation herein provided for shall be paid out of the current expense fund.

Laws 1917, Ch. 44, Sec. 9, p. 103.

CHAPTER X.

BALLOTS AND SUPPLIES.

Section	Section
402. Official election stamp.	408. Only official ballots counted.
403. Ballot boxes.	409. Folding of ballots.
404. Official ballots to be provided.	410. Distribution of ballots.
405. Form and contents of ballots.	411. Record of number of ballots.
406. Submission of special questions.	412. Delivery of and receipt for supplies.
407. Same: Errors and omissions.	413. Instruction card and sample ballots.

SEC. 402. *Official Election Stamp.* The board of county commissioners shall, at their regular meeting in July next pre-

ceding a regular election, make provision for an official election stamp (which must bear the date and year of the election at which it is used, and the words "official ballot,") of such character or device and of such material, as said board may select, and such official stamp must be changed at each general election and kept secret by the officers furnishing and using it, as provided by law, and no one else must know of its form or make until used according to law. It is also the duty of the county commissioners, at their regular session in July next preceding a general election, to authorize the county auditor to provide a suitable number of election tickets for the county, said tickets to be printed under the same regulations as other county printing. The tickets must be bound in book form, each book containing one hundred tickets and printed in the manner prescribed by law.

SEC. 403. *Ballot Boxes.* The county commissioners must provide, at the expense of the county, suitable ballot boxes, with lock and key, and an opening in the lid sufficient to admit a single folded ballot, and no larger, and similar boxes for the use of the distributing clerks, in which they shall deposit defaced, mutilated and returned ballots. The keys must be delivered to one of the judges designated by the board.

SEC. 404. *Official Ballots to Be Provided.* Except as in this title otherwise provided, it shall be the duty of the county auditor of each county to provide printed ballots for every election for public officers in which electors, or any of the electors, within the county, participate, and cause to be printed in the ballot the name of every candidate whose name has been certified to or filed with the county auditor in the manner provided for in this title. Ballots, other than those printed by the respective county auditors according to the provisions of this title, shall not be cast or counted in any election. Nothing in this title contained shall prevent any voter from writing on his ticket the name of any person for whom he desires to vote for an office, and such vote shall be counted the same as if printed upon the ballot and marked by the voter. The voter may place a cross (X) opposite the name he has written, but his having written the name of his choice is sufficient evidence that such is the person for whom he desires to vote. Elections for school district officers are excepted from the provisions of this section. In all municipal elections the duties specified in this section as devolving on the county auditor shall devolve on the municipal clerk.

Cross Reference: Secret ballot guaranteed: Constitution, VI, 1. Name written on ballot without cross to be counted: Secs. 405, 424. See Attorney General's opinion, 1911-1912, pp. 40, 42.

Duties of Auditor: A county auditor in preparing official ballots acts ministerially only, and must place upon the ballot in the proper column the names of the candidates, whose nominations have been duly certified to him; he cannot reject the name of any nominee on the ground that he is ineligible to the office for which he is nominated.

Miller vs. Davenport, 8 Ida., 593; 70 Pac., 610. Fuller vs. Corey (1910), 18 Ida., 558; 110 Pac., 1035.

SEC. 405. *Form and Contents of Ballots:* All election ballots prepared under the provisions of this title for the election of candidates for office shall be white in color and of good quality of printing paper, and the names shall be printed thereon in black ink.

Every ballot shall contain thereon the names of every candidate whose nomination for any office specified on the ballot has been certified or filed according to the provisions of this title, but no name shall appear thereon more than once.

The ballot shall be of sufficient size to contain the names of all the candidates and questions to be voted on, exclusive of the stub or counterfoil. The width of the stub or counterfoil shall be two (2) inches and of the same length as the ballot. Each stub shall be consecutively numbered, beginning with number one, the ballot and stub being connected by a perforated line.

The ballot shall be arranged in two parallel columns, and in the years in which a presidential election is held the names of the candidates for presidential electors and the names of the candidates for state offices, including United States senator and representatives in Congress, shall be printed in the first column of said ballot. The names of the candidates for presidential electors of each political party shall be arranged in a group. The names shall be arranged in each group in the order in which they appear on the certificates of their nomination. The groups shall be arranged in the alphabetical order of the surnames of the candidates for president and the names of the candidates in each group shall be printed upon the ballot in one column. The surnames of the candidates of each political party for the offices of president and vice-president, with the political designation thereof at the right of the surnames, shall be placed in one line above the group of candidates of such party for electors. A sufficient square in which each voter may designate by a cross (X) his choice for electors shall be left at the right of the political designation of the candidates for president and vice-president, and no other

space or margin in which to vote shall be left in any such group of candidates. Immediately following the groups of candidates for presidential electors and in the same column of the ballot, but starting at the top of the column in years in which no presidential election is held, shall be printed the names of the candidates for state offices, including the offices of United States senator and representatives in Congress. The names of candidates for the offices of United States senator and representatives in Congress shall be printed immediately following the groups of candidates for presidential electors in years in which presidential elections are held, and shall be followed by the names of candidates for justice of the supreme court. In the second column of the ballot shall be printed the names of the candidates for judge of the district court, county and precinct offices and any special questions which are to be submitted to a vote of the people at a general election. The two columns of the ballot shall be separated by a space of not less than three-eighths of an inch and not more than three-fourths of an inch, and in the center of such space shall be printed a heavy black line.

To the name of each candidate for a state or county office, except candidates for justice of the supreme court and judge of the district court, shall be added his party or political designation. No greater number of candidates for any office bearing the same political designation shall be placed upon the official ballot than are to be elected.

If a candidate shall receive the nomination of more than one party or more than one political designation for the same office, he may, at any time, not less than thirty-five (35) days prior to the date of the general election, by a writing delivered to the Secretary of State, if the nomination is for a state office, or to the county auditor, if the nomination is for a county office, direct in what order the several political designations shall be added to his name upon the official ballot, and such directions shall be followed by said officer. If, during the said time, the said candidate shall neglect to direct in writing as aforesaid, then said officer shall add said political designations to the name of said candidate in such order as said officer shall see fit.

The names of candidates for every office, except the names of candidates for presidential electors, shall be arranged under the designation of the office in alphabetical order according to the surnames. Immediately preceding the list of candidates

for each office shall be printed a word or words indicating the office for which said persons are candidates. Blank spaces shall be left at the end of the list of candidates for each different office, equal to the number to be elected thereto, in which the voter may insert the names of persons not printed on the ballot for whom he desires to vote.

Ballots shall be so printed as to give to each voter an opportunity to designate by a cross (X) in the square at the right of the name and designation of each candidate his choice of candidates, but nowhere upon the ballot shall any place be provided for voting for all of the candidates of any one political party by a single cross (X) or voting what is known as a straight ticket. The names of all candidates shall be printed in black ink in lines at right angles with the length of the ballot. The names of all candidates other than candidates for presidential electors and for president and vice-president shall be in capital letters not less than one-eighth of an inch nor more than one-fourth of an inch in height. The other names and the political designations of the candidates for president and vice-president shall be in capital letters not less than three-sixteenths of an inch in height. On the ballot in aid to the voter may be placed such words or explanations as "Vote for One", "Vote for Three", "Yes", "No" and the like. Immediately preceding the names of the candidates for president and vice-president and the names of the candidates for presidential electors shall be printed the following instructions to the voter: "To vote for electors of one party, mark a cross (X) in the square at the right of the party name." Immediately preceding the candidates for state offices and at the top of the second column on the ballot shall be printed the following instructions to the voter: "To vote for a person other than a candidate for supreme or district judge, mark a cross (X) in the square at the right of the party name or political designation." Immediately preceding the names of the candidates for justice of the supreme court or judge of the district court shall be printed the following instructions to the voter: "Mark a cross (X) in the square at the right of the name of the person for whom you wish to vote."

When constitutional amendments or other questions are to be submitted to a vote of the people at any general election the question or questions to be voted on shall be printed immediately following the names of the candidates for county and

precinct offices, and immediately preceding said questions on the ballot shall be printed a word or words indicating the nature of the questions to be voted on, as "Constitutional Amendments," and the following instructions to the voter: "To vote on the following, mark a cross (X) in the square at the right of Yes or No." Immediately to the right of the questions to be voted on shall be printed the words: "Yes and No" in letters not less than three-sixteenths of an inch in height, and to the right of each word a square shall be printed on the ballot in which the voter may indicate his preference. The face of the ballot and the stub must be in substantially the following form:

Cited: Green vs. State Board of Canvassers (concur. op.), (1896), 5 Ida., 130; 47 Pac., 259. Williams vs. Lewis (1898), 6 Ida., 184; 54 Pac., 619; 98 A. S. R., 942.

Party Tickets: Only one ticket under the recognized name or designation of a political party is entitled to be placed upon the official ballot.

Williams vs. Lewis, 6 Ida., 184; 54 Pac., 619.

Same: Determination of Conflict: Where contention arises between two conventions of the same party as to which is entitled to have the ticket nominated by it placed upon the official ballot under the recognized party name, the question will be decided in favor of the ticket nominated by the convention called by the regular State Central Committee of the party.

Williams vs. Lewis, 6 Ida., 184; 54 Pac., 619.

Numbering Ballots: This statute provides for numbering the stub but does not authorize the numbering of the ballot.

McGrane vs. County of Nez Perce, 18 Ida., 714; 112 Pac., 312.

As Amended Laws 1917, Ch. 93, Sec. 1, p. 319.

Cross Reference: Names may be written on ticket or blank spaces of ballot: Secs. 404, 424. See Attorney General's opinion, 1911-1912, pp. 40, 42.

Constitutional Amendments: While the preparation of the ballot is clearly provided for by this section no provision is made for the determination of what is a single constitutional amendment. McBee vs. Brady (1909), 15 Ida., 761; 100 Pac., 77.

County Seat Removal Elections: This section does not apply to the ballots to be used in county seat removal elections. Whitla vs. Quarles (1908), 15 Ida., 604; 98 Pac., 631.

Numbering Stub: This section provides for numbering the stub but the ballot should not be numbered. McGrane vs. Nez Perce Co. (1910), 18 Ida., 714; 112 Pac., 312; Ann. Cas., 1912A, 165; 32 L. R. A. (N. S.), 730.

SEC. 406. *Submission on Special Questions:* Whenever the Secretary of State has duly certified to the county auditor any question to be submitted to a vote of the people the county auditor shall have said question printed upon the regular official ballot in the same manner as prescribed in the preceding section for the printing of questions submitting constitutional amendments to a vote of the people. The county auditor shall also

cause to be printed upon the regular official ballot any question required by law to be submitted to the vote of the electors of any locality and not to the State generally at any general election: *Provided, however,* That in all questions submitted to the voters of a municipal corporation alone it shall be the duty of the municipal clerk to provide the necessary tickets: *Provided, further,* In case any question is to be submitted to the voters of any county or any locality at a time when no general election is to be held the county auditor shall prepare ballots to be printed and furnished for each precinct where said questions are to be voted upon, and said ballots shall be prepared as follows:

The ballots shall be seven (7) inches wide and shall be attached to a stub or counterfoil two (2) inches wide by a perforated line. Said ballots shall be white in color and at the top of the ballots shall be words indicating the nature of the proposition to be voted upon, as "County Division" or "School Bond Issue," as the case may be. Below these words and one (1) inch from the upper margin on each ballot a line shall be printed reaching the full width thereof. From a point one (1) inch from the right end of this line a perpendicular line shall be printed reaching to the lower margin of the ballot. In the space to the left of this perpendicular line shall be printed the question to be submitted to the vote of the electors, as now required by law. In the space to the right of this perpendicular line two circles, each one-half inch in diameter, shall be printed, one above the other, with the word "Yes" to the left of the upper circle and the word "No" to the left of the lower circle. The voter may place a cross (X) within one of these circles, and thereby he votes. Should two or more questions be submitted to a vote on the same ballot they shall be separated from each other by a printed line running the full width of the ballot, and immediately below said printed line shall be the word or words indicating the nature of the question to be voted on, as "County Division" or "School Bond Issue," as the case may be, and two circles, as provided above, shall be printed in the space to the right of each question. Such special ballots shall be of sufficient length to contain all questions submitted, printed in long primer type. The stubs or counterfoil shall contain the name of the county, the date of the election and shall be numbered consecutively from one upwards for each separate precinct in which said questions are voted upon.

As Amended Laws 1917, Ch. 93, Sec. 2, p. 321.

SEC. 407. *Same: Errors and Omissions.* Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names or descriptions of the candidates nominated for office, or in the printing of the tickets, the Probate Court of the county, may, upon application of any elector, by order, require the County Auditor or Municipal Clerk to correct such error, or to show cause why such error should not be corrected.

Cited: McGrane vs. County of Nez Perce, 18 Ida., 714, 727; 112 Pac., 312; Ann. Cas., 1912A, 165; 32 L. R. A. (N. S.), 730.

Defective Ballots: Correction: Where a candidate for a county office neglects to have a defect in the official ballot corrected as provided for in this section, he cannot, after the election is had and he finds himself defeated, raise the objection that the name of the successful candidate was improperly placed on the official ballot.

Baker vs. Scott, 4 Ida., 596; 43 Pac., 76.

SEC. 408. *Only Official Ballots Counted.* No ballot must be used or counted at any election except the legal ballot printed by the County Auditor, or, in the case of municipal elections, by the Clerk of the Municipality, and distributed according to law by the Distributing Clerk within the polling place. And no ticket must be distributed by the Distributing Clerk, or permitted to be used by the Election Officers, which has any mark or thing on the back or outside whereby it might be distinguished from any other ballot legally used on the same day. No ballot or ticket printed in imitation of the legal ticket furnished by the County Auditor, or, in the case of municipal elections, by the Clerk of the Municipality, according to law, shall be circulated on the day of election, or brought into the polling place, and no elector shall be permitted to vote any other ballot than the one he received from the Distributing Clerk.

Penalty Does Not Apply to Electors: The prohibition contained in this section against election officers furnishing the electors with ballots containing distinguishing marks, is directed against the officers charged with the preparation and furnishing of the ballots, and directs and commands the officers as to the manner and method of discharging their public duties, but the statute nowhere prescribes that the penalty for violating this duty or a failure to faithfully discharge it shall be visited upon the electors or avoid the election.

McGrane vs. County of Nez Perce (1910), 18 Ida., 714; 112 Pac., 312; Ann. Cas., 1912A, 165; 32 L. R. A. (N. S.), 730.

Numbering Ballots: To hold that the numbering of ballots by the election officers has the effect of rendering an election void, would place it within the power of the officers to disfranchise the entire electorate.

McGrane vs. County of Nez Perce, 18 Ida., 714; 112 Pac., 312.

Cited: Huffaker vs. Edgington (1917), 30 Ida., 179; 163 Pac., 793.

Cross Reference: Use of stickers in case of vacancy: Sec. 392, Revised Codes.

Use of Stickers: I doubt that our court would countenance the use of stickers on election ballots to vote for a person whose name is not printed on the ticket, as such a use has been decided a mutilation of the ballot in other states. Attorney General's opinion, 1911-1912, p. 54.

Ballots upon which stickers have been affixed by the voters or names written in are not mutilated ballots and should be counted in all respects save for the candidate whose name appears on the sticker. Attorney General's opinion, 1913-1914, p. 30.

SEC. 409. *Folding of Ballots:* Every ballot used at any general election must, before it is handed to the voter, be folded by the distributing clerk along the line separating the two columns on said ballot and stamped on the outside with the official election stamp. After the ballot has been marked by the voter, it shall be folded in the same manner so as to conceal its contents and to expose the impression of the official election stamp on the back.

As amended Laws 1917, Ch. 93, Sec. 3, p. 322.

SEC. 410. *Distribution of Ballots.* It shall be the duty of the County Auditor of the County (or the Municipal Clerk in the case of Municipal Elections), to furnish and cause to be delivered to the Judges of Election of each election precinct within the county (or within the municipality, in the case of municipal elections), in which an election is to be held, at the polling place of the precinct before the opening of the polls, the proper number of tickets required by this title: *Provided*, That not less than sixty (60) tickets shall be furnished for each fifty (50) electors registered in each precinct in the county (and in the case of municipal elections, each precinct in the municipality).

Laws 1913, page 384.

SEC. 411. *Record of Number of Ballots.* The County Auditor of each county shall keep a record of the number of tickets printed and furnished to each polling place and preserve the same for one year.

SEC. 412. *Delivery of and Receipt of Supplies.* The required number of tickets, together with the official stamp and ink pad for the purpose of stamping or designating the official tickets, as hereinbefore provided, shall be delivered to the Judges of Election in sealed packages, with marks on the outside clearly designating the polling place for which they are intended, upon receipt of which at least a majority of the

Judges of Election must return receipts therefor to the County Auditor in case of county elections, and to the clerk of the municipality in case of municipal elections, and the several auditors and clerks shall preserve the receipts for one year.

SEC. 413. *Instruction Cards and Sample Ballots.* The County Auditor of each county in case of a general election, and the several city clerks in case of city elections, shall prepare full instructions for the guidance of voters at such elections, as to obtaining tickets, as to the manner of marking them, and as to obtaining new tickets in place of those accidentally spoiled, and they shall respectively cause the same, together with copies of Sections 6370, 6371, and 6372, of the title relating to crimes against the elective franchise, to be printed in large, clear type, on separate cards, to be called Cards of Instruction. The County Auditor of each county, and the several city clerks in case of a municipal election, shall furnish four such cards to the Judges of Election in each election precinct, and one additional card for each fifty registered electors or fractional part thereof, at the same time and in the same manner as the printed tickets. The Judges of Election shall post not less than one of such cards in each place or compartment provided for the preparation of tickets, and not less than three of such cards elsewhere in and about the polling places, upon the day of election. The County Auditor of each county, and the several city clerks in case of a municipal election, shall cause to be printed on tinted or colored paper, without official indorsement of any kind, and furnish to the Judges of Election of each election precinct, at the same time and in the same manner as the official tickets and official stamps, six sample or specimen tickets and one additional sample ticket for each fifty registered electors or fractional part thereof in the precinct. The sample tickets shall be printed like the official or regular tickets, and of the same size without the stub. There shall be posted in each of the compartments or booths, one of the sample tickets without the official stamp, and not less than four such tickets shall be posted elsewhere in and about the polling places on the day of election. It shall be the duty of the same officers, at the same time and in the same manner, to provide and furnish to each polling place proper and necessary supplies and conveniences for marking the tickets.

CHAPTER XI.**CONDUCT OF ELECTIONS.**

Section	Section
414. Election officers to take oath.	428. Challenging voters.
415. Opening and closing of polls.	429. Challenge for want of citizen-ship.
416. Changing polling place.	430. Same: For conviction of felony.
417. Same: Proclamation and notice.	431. Same: For want of residence: For non-age.
418. Opening ballot boxes.	432. Same: Residence: How determined.
419. Opening supplies.	433. Oath of challenged person.
420. Judges may administer oaths.	434. Duty of clerks.
421. Duties of constable.	435. Judge's duty to challenge.
422. Voting to continue during election.	436. Refusal to take oath.
423. Delivery of ticket to elector.	437. Disposal of stubs and defaced tickets.
424. Manner of voting.	438. Form of poll lists.
425. Spoiled ballots.	
426. Deposit of ballot in box.	
426a. Same: Unstamped ballots.	
427. Officers not to divulge information.	

SEC. 414. *Election Officers to Take Oath.* Before opening the polls, all officers of election must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the township may administer and certify such oath.

SEC. 415. *Opening and Closing of Polls.* At all elections to be held under this title, the polls must be opened at the hour of eight o'clock in the forenoon, if the regularly appointed judges of election and distributing clerk are present; but in case they are not present, then the polls must not be opened by the Judges or Distributing Clerk elected until the hour of nine o'clock, unless a majority of the regularly appointed Judges are present, and the polls must continue open until seven o'clock in the evening of the same day, at which time the polls must be closed; and upon opening the polls, one of the clerks, under the direction of the Judges, must make proclamation of the same; and thirty minutes before closing the polls, proclamation must be made in like manner, and the polls closed in half an hour thereafter.

SEC. 416. *Changing Polling Place.* Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the Judges of Election, after having assembled as near as practicable to such place, and before receiving any vote, may adjourn to the nearest convenient place for

holding the election, and at such adjourned place forthwith proceed with the election.

SEC. 417. *Same: Proclamation and Notice.* Upon adjourning any election, as provided in the preceding section, the judges shall cause proclamation thereof to be made, and shall post a notice upon the place where the adjournment was made from, notifying electors of the change of polling place.

SEC. 418. *Opening Ballot Boxes.* Before receiving any ballots the Judge must, in the presence of any persons assembled at the polling place, open and exhibit, close and lock, the ballot boxes, and thereafter they must not be removed from the polling place until all the ballots are counted, nor must they be opened until after the polls are finally closed, and then in the presence of the bystanders: *Provided*, That in precincts having two sets of election officers and duplicate ballot boxes, as provided for in Sections 443 to 447, inclusive, of this title, said ballot boxes may be opened during the election for the purpose of counting the ballots as in said sections provided.

SEC. 419. *Opening Supplies.* The Judges of Election, on the opening of the polls, must break the sealed packages of election tickets, official stamp and other supplies, in the presence of bystanders.

SEC. 420. *Judges May Administer Oaths.* Either Judge may administer and certify any oath required to be administered during the progress of an election, and either Judge may challenge a voter of whose qualifications to vote he is in doubt, but in such case one of the remaining Judges must administer the oath.

SEC. 421. *Duties of Constable.* The constable of the precinct shall be in attendance at the polling place on the day of election, and, where there is no constable, the Judges of Election may appoint some capable person to act as such during the election, and he shall have the power to make arrests for disturbance of the peace, as provided by law for such officers, and he shall allow no one within the guard rail of the polling place except those who go to vote, and shall allow but one elector in a compartment at one time.

SEC. 422. *Voting to Continue During Election.* Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain open.

SEC. 423. *Delivery of Ticket to Elector.* An elector desiring to vote shall give his name and, if requested to do so, his residence, to one of the Clerks of Election, who shall thereupon announce the same in a loud and distinct tone of voice, clear and audible, and if such name is found on the check list by the election officer having charge thereof, he shall likewise repeat the said name, and the voter shall be allowed to enter the space enclosed by the guard rail as hereinbefore provided. The Distributing Clerk shall give him one, and only one, ticket, and his name shall be immediately checked on said list by placing a mark on the registry list to denote that he has received a ticket, and the ticket must be stamped on the back and near the top of the ticket with the official stamp by the Distributing Clerk, and thereupon delivered to the elector. Besides the election officers, not more than one voter, in excess of the voting shelves or compartments provided, shall be allowed in said enclosed space at one time.

SEC. 424. *Manner of Voting:* On receipt of his ticket the voter shall forthwith and without leaving the enclosed space retire alone to one of the voting shelves or compartments so provided and shall prepare his ticket by marking in the appropriate margin or placing a cross (X) opposite the name of the candidate of his choice for each office to be filled, or by filling in or writing the name of the person for whom he wishes to vote in the blank space provided therefor under each office to be filled and following the names of the regularly nominated candidates and marking a cross (X) opposite such names. In voting for presidential electors he shall mark a cross (X) opposite the political designation of the candidates for President and Vice-President for whom he wishes to vote or by writing in the names of persons for Presidential Electors in the blank spaces provided therefor and marking a cross (X) opposite such names. In case of a question submitted to the vote of the people and appearing on the regular ballot, he shall mark in the appropriate margin or square a cross (X) against the answer which he desires to give. In case of questions submitted to voters of particular localities at special elections, he shall vote by marking in the appropriate margin or circle the cross (X) against the answer which he desires to give. Before leaving the voting shelf or compartment the voter shall fold his ticket without displaying the marks thereon so as to expose the impression of the official stamp on the back and he shall keep the same so folded until he has voted. In case of

the ballot voted at a regular general election, he shall fold the same in the same manner in which it is folded by the distributing clerk before being given to the voter. After marking his ballot the voter shall hand it to one of the judges and announce his name. He shall mark his ticket or ballot without delay and shall quit said enclosed space as soon as he has voted.

No such voter shall be allowed to occupy a voting shelf or compartment already occupied by another, nor to remain within said enclosed space more than ten minutes, nor to occupy a voting shelf or compartment more than five minutes in case all of such shelves or compartments are in use and other voters are waiting to occupy the same. No voter, not an election officer, whose name has been checked on the list of the election officers, shall be allowed to re-enter said enclosed space during said election. It shall be the duty of the judges for the time being to secure the observance of the provisions of this section: *Provided*, That if any registered elector, who is blind or otherwise disqualified by reason of physical infirmities rendering such voter incapable of personally marking his ballot, desires to vote, then and in that case any two of the judges not of the same political party may, at the request of such elector, mark and prepare his ballot for him, placing an (X) mark in the proper place and opposite the names of the candidates for whom such elector desires to vote. When the ballot so marked by the judges is properly prepared and folded it shall be given to the elector, who shall deliver it to the proper judge to be deposited in the ballot box, as in other cases. The judges assisting any such physically incapacitated elector in the preparation of his ballot must not influence or attempt to influence such voter in the selection of candidates to be voted for, and any judge who has assisted any such elector who shall divulge to any person the name of any candidate for whom such elector voted shall be guilty of a misdemeanor.

Cross Reference: As to manner of voting, see Sec. 405, Revised Codes. Name written on ballot without cross to be counted: Secs. 404, 405, Revised Codes. See Attorney General's opinion, 1911-1912, p. 42.

SEC. 425. *Spoiled Ballots*. No person shall take or remove any ticket from the polling place before the close of the polls. If an elector inadvertently or by mistake spoils a ticket, he shall return it folded to the distributing clerk, who must, if satisfied of such inadvertence, give him another ticket. The ticket thus returned shall, without examination, be immediately

cancelled by writing across the back, or outside of the ticket as folded, the words "Spoiled ticket, another issued," and deposit the defaced ticket in a box provided for that purpose. And no one shall be allowed within the guard rails of the polling place, except the election officers duly appointed, together with the number of voters, as provided in this chapter.

Cross Reference: Number of voters allowed inside the rails, see Sec. 423, Revised Codes.

SEC. 426. *Deposit of Ballots in Box.* The Judge to whom any ballot may be delivered shall, upon the receipt thereof, pronounce in an audible voice the name of the elector, and if no objection shall be made to him, and the Judges are satisfied that he is a legal voter, and is duly registered, and the official stamp is plainly visible on the outside of the folded ballot, he shall, without opening or examining, immediately deposit the ballot in the ballot box, and the clerks of the election shall enter the name of the elector in the poll books.

SEC. 426a. *Same: Unstamped Ballots.* No Judge of Election shall deposit in any ballot box any ballot upon which the official stamp, as hereinbefore provided for, does not appear. Every person violating the provisions of this section shall be guilty of a misdemeanor.

SEC. 427. *Officers Not to Divulge Information.* No officer, Judge or Clerk shall communicate, except for some purpose authorized by law, before the polls are closed, any information as to the name or number on the registry list of any elector who has not applied for a ticket, or who has not voted at the polling place; and no officer, judge or clerk, or other person whomsoever, shall interfere with, or attempt to interfere with, a voter when marking his ticket. No officer, judge or clerk, or other person, shall directly or indirectly, attempt to induce any voter to display his ticket after he shall have marked the same, or to make known to any person the name of any candidate for or against whom he may have voted.

SEC. 428. *Challenging Voters.* In case any person offering to vote is challenged, one of the judges must declare the qualifications of an elector to such person; if the person so challenged then declare himself duly qualified, and the challenge is not withdrawn, one of the judges must then tender him the Elector's Oath as provided by law.

SEC. 429. *Same: Challenge for Want of Citizenship.* If the person be challenged as unqualified, on the ground that he is not a citizen, and will not exhibit his papers pertaining to his naturalization, the judges, or one of them, shall put the following questions:

1. Are you a citizen of the United States?
2. Are you a native or naturalized citizen?
3. Have you become a citizen of the United States by reason of the naturalization of your parents or one of them?
4. Where were your parents, or one of them, naturalized?

If the person offering to vote claims to be a naturalized citizen of the United States, he shall state, under oath, when and in what court he was naturalized.

SEC. 430. *Same: For Conviction of Felony.* If the challenge is on the ground that the person challenged has been convicted of felony and has not been pardoned, he must not be questioned; but the fact may be proved by the production of an authenticated copy of the record, or by the oral testimony of two witnesses and the non-production of a pardon.

SEC. 431. *Same: For Want of Residence: For Non-age.* If the person be challenged as unqualified on the ground that he has not resided in this state for six months immediately preceding the election, the judges, or one of them, shall put the following questions:

1. Have you resided in this State for six months immediately preceding the election, and during that time have you retained a home or domicile elsewhere?
2. Have you been absent from this State within the six months immediately preceding this election?
3. If so, when you left, was it for a temporary purpose, with the design of returning or did you intend remaining away?
4. Did you, while absent, look upon and regard this State as your home?
5. Did you, while absent, vote in any State or Territory?

If the person be challenged on the ground that he has not resided in the county thirty days, one of the judges shall question him as to his residence in the county, precinct or ward in a manner similar to the before-mentioned method of questioning a person as to his residence in this State.

If the person be challenged as unqualified on the ground that he is not twenty-one years of age, the judges, or one of them, shall put the following questions: "Are you twenty-one years of age, to the best of your knowledge and belief?" The judges of election, or one of them, shall put all such other questions to the person challenged under the respective heads aforesaid, as may be necessary to test his qualifications as an elector at that election.

SEC. 432. *Same: Residence: How Determined.* The Judges of Election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable:

1. That place shall be held and considered to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

2. A person shall not be considered or held to have lost his residence who shall leave his home and go into another State, Territory or county of this State, for temporary purpose merely, with an intention of returning.

3. If a person remove to any other State or to any of the Territories, with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in this State.

4. If a person remove from one county in this State to any other county in the State with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in the county from which he removed.

SEC. 433. *Oath of Challenged Person.* If the challenge be not withdrawn after the person offering to vote shall have answered the questions put to him as aforesaid, one of the judges shall tender to him the following oath: "You do solemnly swear (or affirm) that you are a citizen of the United States, of the age of twenty-one years; that you have been a resident of this State for six months next immediately preceding this election, and have not retained a home or domicile elsewhere; that you have been for the last thirty days, and now are, a resident of this county, and that you have not voted at this election."

SEC. 434. *Duty of Clerks.* Whenever any person's vote shall be received after having taken the oath or affirmation prescribed in the preceding section, it shall be the duty of the

clerk of the election to write on the poll books, at the end of the person's name, "Sworn."

SEC. 435. *Judge's Duty to Challenge.* It shall be the duty of any judge of election to challenge any person offering to vote whom he believes not to be qualified as an elector.

SEC. 436. *Refusal to Take Oath.* If any person challenged refuses to take the oath or affirmation tendered, or refuses to be sworn and to answer the questions touching the matter of naturalization, he must not be allowed to vote: *Provided*, That after such oath shall have been taken, the judges may nevertheless refuse to permit such person to vote if they shall be satisfied that he is not a legal voter.

Cited: Olympia M. & M. Co. vs. Kerns (1913), 24 Ida., 881; 135 Pac., 255; 59 L. Ed., 542; 35 S. C. R., 415; 236 U. S., 211; Ann. Cas., 1917C, 1021.

SEC. 437. *Disposal of Stubs and Defaced Tickets.* As soon as the polls are finally closed the distributing clerk must deliver to the Judges of Election the book or books of tickets from which tickets have been taken during the election, and the box containing the defaced, mutilated or returned ballots.

SEC. 438. *Form of Poll Lists.* The following is the form of poll lists to be kept by the judges and clerks of election:

Poll Lists

Of the election held in the precinct of _____, in the County of _____, on the _____ day of _____, in the year A. D. one thousand nine hundred and _____, A. B., C. D., and E. F., Judges, and G. H., I. J., and K. L., Clerks of said election, were respectively sworn (or affirmed), as the law directs, previous to their entering on the duties of their respective offices.

Number and Names of Electors Voting.

No.	NAME	No.	NAME
1	A. B.	3	E. F.
2	C. D.	4	G. H.

We hereby certify that the number of electors voting at this election amounts to _____

Attest:

G. H.,
I. J.,
K. L.,

} Clerks.

A. B.,
C. D.,
E. F.,

} Judges of Election.

Poll Lists: These poll lists are distinct from the check lists prepared by the registrar under Sec. 396, Revised Codes. See Attorney General's opinion, 1913-1914, p. 31.

CHAPTER XII.

ABSENT VOTING.

Section

1. Absent voting authorized.
2. Application for ballot.
3. Issuance of ballot.
4. Folding of ballots: inclosure.
5. Return of ballot.
6. Transmission of ballot to polls.
7. Deposit of ballot.
8. Rejection of defective ballots.

Section

9. Challenging absentee's vote.
10. Effect of intervening death of absent voter.
11. Double voting prohibited.
12. General election laws applicable.
13. Penal provisions.
14. Interpretation of chapter.

SEC. 1. *Absent Voting Authorized:* Any qualified elector of the State of Idaho who is absent or expects to be absent from the election precinct in which he resides on the day of holding any election under any of the laws of this State in which an official ballot is required, and if registration is required for such election, who is duly registered therefor, may vote at any such election, as hereinafter provided.

Laws 1917, Ch. 142, Sec. 1, p. 453.

SEC. 2. *Application for Ballot:* Any such absent elector may make application to the county auditor, the city clerk or other proper officer charged by law with the duty of issuing official ballots for such election, on a blank to be furnished by such issuing officer, for an official ballot or ballots of the kind or kinds to be voted on at such election, which application shall be made not more than fifteen (15) days nor less than one (1) day preceding such election, and shall be duly signed and sworn to by such elector before an officer authorized to administer oaths and shall be in substantially the following form:

"APPLICATION FOR BALLOT TO BE VOTED AT
THE-----ELECTION, -----, 19-----.

State of -----, }
County of -----, } ss.

I, -----, do solemnly swear that I am a duly qualified and registered elector of the State of Idaho and of -----County, at -----in the -----election precinct. I expect to be absent from said election precinct on

the date of said election. I hereby apply for an official ballot or ballots to be voted by myself at such election.

Signed, _____

Subscribed and sworn to before me this _____ day
of _____, 19____.

(Official Title)."

Provided, That if for a primary election ballot, such application shall designate the applicant's political affiliation.

The blanks in said statement shall be filled by the issuing officer to the extent necessary to identify the election at which said ballot or ballots are proposed to be cast. The issuing officer shall keep as a part of the records of his office a list of all applications so received and of the manner and time of delivery of ballots thereon.

Laws 1917, Ch. 142, Sec. 2, p. 454.

SEC. 3. *Issuance of Ballot*: The officer receiving such application shall forthwith deliver to said applicant elector personally or shall mail to him by registered mail, postage prepaid, an official ballot or ballots, one of each kind thereof, to be voted on by the electorate at such election.

Laws 1917, Ch. 142, Sec. 3, p. 454.

SEC. 4. *Folding of Ballots: Inclosure*: Such officer shall fold said ballot or ballots as specified in the law controlling in said election and enclose same in an official envelope, unsealed, to be furnished by him, which envelope shall bear on its face the name, official title and postoffice address of such officer, and on the other side a printed statement substantially as follows:

"I am a duly qualified and registered elector of the State of Idaho, _____ County, _____ election precinct. My personal attendance in said election precinct on _____, 19____, the date of the _____ election in said precinct, is prevented.

Dated _____, 19____.

Signed: _____,"

Provided, That if the ballot or ballots enclosed are for a primary election, the statement must designate the elector's political affiliation.

The blanks in said statement shall be filled by such issuing officer to the extent necessary to identify the election at which said ballot or ballots are proposed to be cast. There shall also

be printed upon the back of said official envelope a copy of Sections 5 and 13 of this Act.

Laws 1917, Ch. 142, Sec. 4, p. 455.

SEC. 5. *Return of Ballot*: On marking such ballot or ballots such absent elector shall refold same as theretofore folded and shall enclose the same in said official envelope and seal said envelope securely and mail by registered mail or deliver it in person to the officer who issued same at least one (1) day before the date of such election. Said ballot or ballots shall be so marked, folded and sealed by said voter in private and secretly.

Laws 1917, Ch. 142, Sec. 5, p. 455.

SEC. 6. *Transmission of Ballot to Polls*: On receipt of such absent elector's ballot or ballots said officer receiving same shall forthwith enclose same, unopened, together with the application upon which such ballot or ballots were issued, in a carrier envelope endorsed with the name and official title of such officer and the words: "Absent Voter's Ballot, to be opened only at the polls on election day while said polls are open." He shall hold the same until the delivery of the official ballots to the judges of election of the precinct in which said elector resides and shall deliver said ballot or ballots to said judges with such official ballots, or in case said ballot or ballots are received by such officer after the delivery of the official ballots to such judges he shall forthwith, upon its receipt, enclose it in a carrier envelope, as heretofore prescribed, addressed to the judges of such election precinct in their official capacity and mail the same, postage prepaid, to such judges of election or deliver or send the same by agent to such judges without, however, incurring any expense for such delivery to the county or municipality, as the case may be.

Laws 1917, Ch. 142, Sec. 6, p. 455.

SEC. 7. *Deposit of Ballot*: Between the opening and closing of the polls on such election day the judges of election of such precinct shall open the carrier envelope only, announce the absent voter's name and compare the signature upon the application with the signature of the ballot envelope, and in case they find such signatures to correspond and the applicant to be a duly qualified elector of the precinct and that he has not theretofore voted at said election they shall open the ballot envelope and remove the ballot or ballots without

destroying the endorsements on the envelope, nor unfolding nor permitting the ballot or ballots to be unfolded, and having endorsed the ballot or ballots as other ballots are required to be endorsed shall deposit the same in the proper ballot box and cause the absent voter's name to be entered on the poll books the same as though he had been present and voted in person.

Laws 1917, Ch. 142, Sec. 7, p. 456.

SEC. 8. *Rejection of Defective Ballots*: The judges shall reject such ballot or ballots as do not conform to the foregoing requirements, or in case the ballot envelope has been theretofore opened or contains more than one ballot of any one kind, and rejected ballots shall each be endorsed as "Rejected," with the reasons therefor and fastened to the ballot envelope and application accompanying same. All rejected ballots shall be enclosed and securely sealed in an envelope upon which the judges shall endorse "Defective absentee ballots" with the name of the precinct and the date of election at which they were rejected, signed by said judges, and shall return to the same officer and in the same manner as by law provided for the return and preservation of spoiled or mutilated ballots. All applications and ballot envelopes shall be returned by the judges to the officer to whom the returns of the election are made.

Laws 1917, Ch. 142, Sec. 8, p. 456.

SEC. 9. *Challenging Absentee's Vote*: The vote of any absent voter may be challenged for cause as though he were present and the judges of election shall have all the powers and authority given by law to hear and determine the legality of such absentee vote or ballot.

Laws 1917, Ch. 142, Sec. 9, p. 456.

SEC. 10. *Effect of Intervening Death of Absent Voter*: Whenever proof of the death of any such absent voter, occurring prior to the opening of the polls for such election, shall be furnished to the judges at said election before the ballot of such voter is voted such ballot shall be returned with unused ballots to the officer to whom unused ballots are returned, but the casting of such ballot shall not invalidate the election.

Laws 1917, Ch. 142, Sec. 10, p. 457.

SEC. 11. *Double Voting Prohibited*: No elector whose absentee ballot shall have been voted at any election shall vote in person at such election and no absentee ballot of such voter

shall be voted if said elector shall have theretofore voted at said election in person.

Laws 1917, Ch. 142, Sec. 11, p. 457.

SEC. 12. *General Election Laws Applicable*: All the provisions of the election laws in force in this State at the time of any such election and not inconsistent with this Act relative to the furnishing of ballots and ballot boxes, the canvassing and the making of return of the election and governing the election so held shall apply with full force and effect to all cases of voting created by virtue hereof.

Laws 1917, Ch. 142, Sec. 12, p. 457.

SEC. 13. *Penal Provisions*: Any person who knowingly shall make falsely the affidavit hereinbefore provided shall be guilty of perjury and, upon conviction thereof, shall be punished in the manner provided by law for such offense. Any person who falsely personates another in making said application or statement in this Act provided shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding ninety (90) days, or by a fine not exceeding Five Hundred Dollars (\$500.00). If any person who, having procured an official ballot or ballots as heretofore provided, shall neglect or refuse to return the same to the issuing officer within the time and in the manner in this Act provided or shall wilfully violate any provision of this Act he shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding ninety (90) days or by a fine not exceeding Five Hundred Dollars (\$500.00). Official neglect or malfeasance by any of the officers named in this Act in the performance of their duties created by virtue of the provisions hereof is governed by the provisions of Section 6354 of the Idaho Revised Codes.

Laws 1917, Ch. 142, Sec. 13, p. 457.

SEC. 14. *Interpretation of Chapter*: This Act shall be deemed to provide a method of voting in addition to the method provided by other statutes and to such extent as amendatory of such other statutes relating to the manner and method of voting.

Laws 1917, Ch. 142, Sec. 14, p. 457.

CHAPTER XIII.**CANVASS OF RETURNS.**

Article

1. Canvass by Judges.
2. Canvass by County Commissioners.

Article

3. State Board of Canvassers.
4. Errors and Mistakes in Ballots and Returns.

ARTICLE I.**CANVASS BY JUDGES.**

Section

439. Canvass of votes.
440. Comparison of poll lists, ballots and stubs: Void ballots.
441. Count: Certificate by judges and clerks.
442. Transmission of supplies to county commissioners: Custody.

Section

443. Appointment of two sets of officers.
444. Duplicate ballot boxes.
445. Counting of ballots: Witnesses: Concealment of results.
446. Judges to join in making returns.
447. Application of sections.

SEC. 439. *Canvass of Votes.* When the polls are finally closed the Judges of Election must immediately proceed to canvass the votes given at such election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed and the result thereof declared.

SEC. 440. *Comparison of Poll Lists, Ballots and Stubs: Void Ballots.* The canvass must commence by comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they are found to agree. The box must then be opened, and the ballots found therein counted by the judges, unopened, and the number of ballots in the box must agree with the number marked on the poll list or registry list as having received a ticket, and this number, together with the number of defaced, mutilated and returned ballots, must agree with the number of stubs or counterfoils in the books from which the tickets have been taken.

Any ballot or part of a ballot from which it is impossible to determine the elector's choice, shall be void and shall not be counted: *Provided*, That when a ballot is sufficiently plain to gather therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

Cross Reference: Only official ballots counted: Sec. 408, Revised Codes.

SEC. 441. *Count: Certificate by Judges and Clerk.* The ballots and poll lists agreeing, the Board must then proceed to count and ascertain the number of votes cast, and the clerks must set down in their poll books the name of every person voted for, and then at full length the office for which such person received such votes, and the number he did receive, the number being expressed at full length; such entry to be made, as nearly as circumstances will permit, in the following form, to-wit:

At an election held at the house of (A. B.) in the town (district or precinct) of_____, in the County of_____, and in the State of Idaho, on the_____day of_____A. D. _____, the following named persons received the number of votes annexed to their respective names for the following described offices, to-wit: (A. B.) has_____votes for member of Congress; (I. J.) has_____votes for member of State Senate; (K. L.) has_____votes for member of House of Representatives, (and in like manner for any person voted for).

Certified by us.

Attest:

S. T.,	} Clerks of Election.	O. P.,	} Judges of Election.
U. V.,		Q. R.,	
W. Y.,		M. N.,	

SEC. 442. *Transmission of Supplies to County Commissioners: Custody.* After the canvass of the votes the Judges of Election must enclose and seal one of the poll lists furnished by the Clerk of the District Court, as provided by law; also all stubs and unused ticket books, elector's and freeholder's oaths, defaced or mutilated ballots, and the election stamp, under cover, directed to the Clerk of the Board of County Commissioners of the county in which such election was held. The packages thus sealed must be delivered direct to the said clerk personally, or transmitted by special messenger without expense to the county, or deposited in the nearest postoffice, by one of the judges to be chosen by lot, and the postage thereon and the fees for registering the same must be fully prepaid, and said package must be duly registered and receipt therefor taken. The second poll list, together with the ballots, must be, by said judges, placed in the ballot box, and by them sealed up and then deposited with one of said judges, to be decided by lot if they cannot otherwise agree; and the said poll list and ballots must be kept with the seal unbroken for at least eight

months, unless the same is required as evidence in a court of law in any case arising under the election laws of this State, and then only when the judge having said ballot box in charge is served with a subpoena requiring him to produce the same in court as evidence in any such before mentioned case, when the same may be opened under the direction of the court.

And the third poll list shall be transmitted to the Clerk of the District Court within ten days after such election, as provided by law.

Laws 1913, page 379.

Application: This section applies only when the returns of the judges are properly made, and not when the returns are imperfect and are sent back to the judges for correction. Where the returns have been rejected, however, the judges may, under the provisions of Section 448, Revised Codes, open the ballot box for the purpose of correcting the returns. *Davies vs. Board of County Commissioners* (1914), 26 Ida., 450; 143 Pac., 945.

SEC. 443. *Appointment of Two Sets of Officers.* In every precinct where, at the General Election then next preceding, there were more than one hundred votes cast for the office of Governor, the Board of County Commissioners of the county wherein the same is situated, shall, at the time provided for the appointment of election officers, appoint two sets of such officers, and in making such appointment shall designate which set shall act under the provisions of this and the following Sections of this Article. And such Board shall also make suitable provision for the carrying of these Sections into effect.

Two Sets of Officers: Two full sets of officers are contemplated, and the judges appointed in these precincts may choose two clerks in every instance. Attorney General's opinion, 1911-1912, p. 48.

Primary elections: In precincts where two sets of officers work during general election, the same number should be appointed for the primary election. Attorney General's opinion, 1911-1912, p. 48.

SEC. 444. *Duplicate of Ballot Boxes.* When, at any election in any precinct to which these Sections apply, five votes shall have been cast, another ballot box for receiving ballots shall be used, and the first ballot box shall be closed and delivered to such judges designated, as provided in the preceding Section, who shall proceed to the place provided for them, and shall at once count the votes in said ballot box; and when counted, they shall return said emptied ballot box to the judges receiving the ballots and otherwise conducting the election, and the latter shall then deliver to the judges who were designated to count the ballots, the second ballot box, and such judges shall immediately count the ballots therein contained as above pro-

vided; and they shall continue so to count the ballots and so to exchange the ballot boxes till the close of the polls, after which time both sets of judges shall, acting separately, count the remaining ballots, dividing the same between them.

Laws 1913, page 94.

SEC. 445. *Counting of Ballots: Witnesses: Concealment of Results.* The Board of County Commissioners of the several counties must provide two sets of ballot boxes for all precincts where these sections apply, and shall provide a suitable and convenient place or room immediately adjoining the place where the election is being held, for the use of the election officers counting the ballots during the day. Such counting may be witnessed by one representative from each of the political parties represented upon the official ballot, which representatives shall be designated in writing by the chairman and secretary of the respective County Central Committees, or in case of a city election by the City Central Committee, and who shall each take and subscribe an oath before one of the Judges of Election that he will not, prior to the closing of the polls, communicate in any manner, directly or indirectly, by word or sign, the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto; and such representatives and the judges counting the ballots shall be confined to the room or place provided and shall not leave the same during the count except in case of necessity, and then in the custody of the Constable of Election; nor shall any such election officers or party representatives in any manner, directly or indirectly, by word or sign, disclose or communicate the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto, until the polls are closed.

Any person who shall intentionally ascertain or attempt to ascertain the progress or state of the count before the close of the polls, and any officer of election or party representative designated as aforesaid, who shall violate any of the provisions of this Section, shall be guilty of a felony, and shall be punished by a fine not to exceed one thousand dollars, or imprisonment in the penitentiary for a period not to exceed one year, or by both such fine and imprisonment.

SEC. 446. *Judges to Join in Making Return.* All the Judges of Election shall join in making the return to the Board of County Commissioners.

SEC. 447. *Application of Sections.* These sections shall only apply to General Elections, and, except as herein modified, the General Election laws are in every way applicable to the precincts acting under the provisions hereof, and to all the officers of election.

ARTICLE 2.

CANVASS BY COUNTY COMMISSIONERS.

Section	Section
448. Canvass of returns: Abstracts of votes.	449. Disposition of abstracts of votes.

SEC. 448. *Canvass of Returns: Abstracts of Votes.* The Board of County Commissioners, the Auditor acting as clerk, in the several counties, must act as a Board of Canvassers of elections, and must, on the tenth day after any General or Special Election, or sooner, if all the returns be received, and any two of the Commissioners are present, proceed publicly, at their office, to open the returns and canvass the votes of said election, and make up abstracts thereof; and it is their duty to canvass and make up abstracts of all returns that are intelligible on their face and which are sufficiently authenticated to show what returns they are; and if any returns are rejected on account of informality, ambiguity or uncertainty—and none must be rejected for other causes—then it is the duty of the Board to deliver the returns so rejected to the Sheriff of the county, who must proceed at once to summon and call together the Board of Judges of Election of the precinct from which said returns were received, and inform them that such return has been rejected; and it is the duty of such Board of Judges to meet publicly, at the place where the election was held in their precinct, immediately after receiving such notice, and at once proceed to put said returns in due form and certify to the same; and for the purpose of so doing they may have the ballot box brought in and opened in their presence and the contents thereof inspected, and when said returns have been duly corrected they must be delivered into the hands of the Sheriff, and the Board of Canvassers may adjourn, to await the correction of said returns, for the period of not more than five days at one time, nor more than ten days in all. When said canvass is completed the abstracts must be made up and signed by the Board. The abstracts shall be made out in the following manner:

The abstracts of votes for electors for President and Vice-President of the United States shall be on one sheet, and the abstract of votes for Representative in Congress shall be on another sheet, and the abstract of votes for officers of the executive department shall be on another sheet, and the abstract of votes for Senator shall be on another sheet, and the abstract of votes for Representative shall be on another sheet, and the abstract of votes for Judges of the Supreme Court shall be on another sheet, and the abstract of votes for Judges of the District Court shall be on another sheet, and the abstract of votes for county and precinct officers shall be on another sheet; and it shall be the duty of the Auditor of the county immediately to make out a certificate of election to each of the persons having the highest number of votes for county and precinct officers, respectively, and cause such certificate to be delivered to the person entitled to it. If any two or more persons have an equal number of votes for the same county or precinct office, and a higher number than the other person, the County Commissioners shall immediately determine by lot which of the two candidates shall be elected.

Cited: Roberts vs. Kartzke (1910), 18 Ida., 552; 111 Pac., 1.

Duty of Canvassers: The Board of Commissioners in acting as a Board of Canvassers, has no authority to declare any person elected to an office, but must make out the abstracts of votes for each office separately, and deliver them to the Auditor whose duty it is, as Auditor, and not as Clerk of the Board, to make out a certificate of election to each of the persons having the highest number of votes.

Cunningham vs. George (1892), 3 Ida., 456; 31 Pac., 809.

Correction of Returns by Judges: Under this section the Judges of Election have authority, when their returns have been rejected, to reopen the ballot boxes for the correction of the same. Davies vs. Board of County Commissioners (1914), 26 Ida., 450; 143 Pac., 945.

SEC. 449. *Disposition of Abstracts of Votes*. The Auditor of the county, immediately after making out abstracts of votes given in his county, shall make a copy of such abstracts and deliver or transmit same in a registered package by mail to the office of the Secretary of State; the original abstracts he shall file and record in a book in his office to be kept for that purpose. He shall also certify to the abstracts and copies, and affix thereto the county seal, and the said Auditor shall indorse on the back of each abstract: "Certified copy of the abstract of votes cast for Governor, etc., members of the Legislature, etc., (as the case may be) cast at the regular election in -----County, -----, 19-----."

ARTICLE 3. STATE BOARD OF CANVASSERS.

Section	Section
450. Constitution of the board.	454. Same: In case of tie vote.
451. Delay in remitting abstracts.	455. Record of statement: Certificates of Election.
452. Meeting of the board.	456. List of members of Legislature.
453. Duties of board: Statement of results.	

SEC. 450. *Constitution of Board.* The Governor, Secretary of State, State Auditor, State Treasurer and Attorney General, or any three of them, shall constitute the State Board of Canvassers, and shall canvass the abstracts of votes cast in the different counties of the State for electors of President and Vice President of the United States, for Representative in Congress, for Judges of the Supreme Court and District Courts, and for Senators and Representatives and all State officers.

Cited: Olympia M. & M. Co. vs. Kerns (1913), 24 Ida., 481; 135 Pac., 255; dis. 236, U. S., 211; 59 L. Ed., 542; 35 S. C. R., 415; Ann. Cas., 1917C, 1021.

SEC. 451. *Delay in Remitting Abstracts.* If from any county no such abstract of votes shall have been received within twenty days next after election by the Secretary of State, he shall dispatch a special messenger to obtain a copy of the same from the County Auditor of such county, and such County Auditor shall immediately, on demand of such messenger, make out and deliver to him the copy required, which copy of the abstract of votes the messenger shall deliver to the Secretary of State without delay. The said messenger shall receive as compensation for his services three dollars per day and fifteen cents for each mile traveled in going to and returning from the county seat of said county, by the usual route, to be paid by the county.

SEC. 452. *Meeting of Board.* For the purpose of canvassing the result of elections, the State Board of Canvassers shall meet at the office of the Secretary of State, at ten o'clock of the forenoon of the twentieth day after any election for any of the officers mentioned in Section 450 (if it be not on Sunday; if it be on Sunday, then they shall meet on the twenty-first day), when they shall, if the returns from all the counties of the State be in possession of the Secretary of State, proceed to canvass the votes. If the returns are not all in, they shall

adjourn from time to time, as they deem proper, to await the receipt of all the returns: *Provided, however,* That on the second Wednesday of December next after the election, they shall canvass the votes, whether all the returns be received or not.

SEC. 453. *Duties of Board: Statement of Result.* The State Board of Canvassers, when met in accordance with law and a quorum (three) being present, shall proceed to examine and make statement of the whole number of votes given at any such election for all the officers mentioned in Section 450, that shall have been voted for in said election, which statement will show the names of the persons to whom such votes shall have been given for either of the said offices, and the whole number given to each, distinguishing the several districts and counties in which they were given. They shall certify such statement to be correct, and subscribe their names thereto, and they shall thereupon determine what persons have been, by the greatest number of votes, duly elected to such offices, or either of them, and shall indorse and subscribe on such statement a certificate of their determination, and deliver it to the Secretary of State.

Duty of Canvassers: It is not necessary for the State Board of Canvassers to declare in terms whether, in their opinion, any amendment to the Constitution has been adopted or not.

Hays vs. Hays (1897), 5 Ida., 154; 47 Pac., 732; Ann. Cas., 1916B, 1005.

Ministerial Duties: The duties of the state canvassing board are adding up the votes received by the several candidates, as returned by the several county boards, ascertaining the total vote, and declaring and certifying the result. These are purely clerical, ministerial and administrative acts, and involve no judicial discretion. Lansdon vs. S. Bd. of Canvassers (1910), 18 Ida., 596; 111 Pac., 133; Ann. Cas., 1913A, 703.

SEC. 454. *Same: In Case of Tie Vote.* If any two or more persons have an equal and the highest number of votes for member of either House of the Legislature, for Judge of the Supreme or District Courts, or for any State office, other than those mentioned in Section 1, of Article 4, of the Constitution, the State canvassers shall proceed to determine, by lot, which of the candidates shall be declared elected. Reasonable notice shall be given to each candidate of the time when such election will be so determined.

Cited: Olympia M. & M. Co. vs. Kerns (1913), 24 Ida., 481; 135 Pac., 255; dis. 236 U.S., 211; 59 L. Ed. 542, 35 S.C.R., 415; Ann. Cas., 1917C, 1021.

SEC. 455. *Record of Statement: Certificates of Election.* The Secretary of State shall record in his office, in a book to

be kept by him for that purpose, each certified statement and determination as made by the State Board of Canvassers, and shall, without delay, make out and transmit to each of the persons thereby declared to be elected a certificate of his election. certified by him under his seal of office.

Cross Reference: Certificate of election is prima facie evidence of right to membership in Legislature.

Sec. 35, Revised Codes.

SEC. 456. *List of Members of Legislature.* Upon the day fixed by law for the assembling of the Legislature, the Secretary of State shall lay before each house a list of the members elected thereto, with the districts they represent, in accordance with the returns in his office.

ARTICLE 4.

ERRORS AND MISTAKES IN BALLOTS AND RETURNS.

Section

457. Misspelled names on ballots.

Section

458. Correction of mistakes.

SEC. 457. *Misspelled Names on Ballots.* Whenever the Judges of Election in any precinct or ward discover in the canvassing of votes that the name of any candidate voted for be misspelled, or the initial letters of his Christian name or names be transposed or omitted in part, or altogether, on the ballot, the vote or votes for such candidate shall be counted for him, if the intention of the elector to vote for him be apparent; and whenever the Board of County Canvassers, or of State Canvassers, shall find that the returns from any precinct, ward, county or district (as the case may be) do not strictly conform to the requirements of law, in the making, certifying and returning of the same, the votes polled in such precinct, ward, county or district shall, nevertheless, be canvassed and counted, if such returns shall be sufficiently explicit to enable such boards, or any person or person authorized to canvass votes and returns, to determine therefrom how many votes were polled for the several persons who were candidates and voted for at the election of which the votes are being canvassed.

Cited: Lansdon vs. State Board of Canvassers, 18 Ida., 596; 111 Pac., 133.

Ministerial Duties of State Board: It is not the business of the state board to determine whether any illegal votes have been cast or not. Their duties are purely clerical, ministerial and administrative and involve no

judicial discretion. *Lansdon vs. S. Bd. of Canvassers* (1910), 18 Ida., 596; 111 Pac., 133; Ann. Cas. 1913A, 703.

Jurisdiction of State Board: Under this and the next section, the state canvassing board has power to send the returns from any county back for correction; but whether it does so, or declines to do so, is not acting in excess of its jurisdiction to canvass the returns and declare the result. *Lansdon vs. S. Bd. of Canvassers* (1910), 18 Ida., 596; 111 Pac., 133, 134.

SEC. 458. *Correction of Mistakes.* If upon proceeding to canvass the votes it shall clearly appear to the canvassers that in any statement produced to them certain matters are omitted in such statement which should have been inserted, or that any mistakes which are clerical, merely, exist, they shall cause the said statement to be sent by one of their number (whom they shall depute for that purpose) to be precinct or ward judges, or to the County Board of Canvassers (as the case may be) from whom they were received, to have the same corrected; and the Judges of Election or County Auditor (as the case may be), when so demanded, shall make such correction as the facts of the case require, but shall not change or alter any decision before made by them, but shall only cause their canvass to be correctly stated; and the Canvassing Board may adjourn from day to day for the purpose of obtaining and receiving such statement: *Provided, always,* That they shall not delay counting past the day provided by law for the completion of the canvass.

Cross Reference: Day provided for completion of canvass. See Sec. 452, Revised Codes.

Cited: *Lansdon vs. State Board of Canvassers* (1910), 18 Ida., 596; 111 Pac., 133; Ann. Cas. 1913A, 703.

CHAPTER XIV.

PRESIDENTIAL ELECTORS.

Section

- 459. Certificates of election.
- 460. Election for Presidential Electors.
- 461. Meeting of Electors.
- 462. Same: Notice to Governor: Vacancies.

Section

- 463. Filling vacancies: Tie vote.
- 464. Notification of election to fill vacancy.
- 465. Compensation of Electors.

SEC. 459. *Certificates of Election.* The Secretary of State shall prepare lists of the names of the Electors of President and Vice President of the United States, elected at any election, procure thereto the signature of the Governor, affix the seal of the State to the same, and deliver one of such certificates thus

signed to each of said Electors on or before the second Wednesday in December next after such election.

Cited: State ex rel. Spofford vs. Gifford (1912), 22 Ida., 613; 126 Pac., 1060.

SEC. 460. *Election for Presidential Electors.* There shall be an election held in the State for the election of such Electors, at the times appointed by any law of the Congress or the Constitution of the United States for such election, and when such election shall be special, the same shall be called and held, and the votes polled and canvassed, in all respects as at a General Election, and the duties of the Electors so elected shall be the same as prescribed by law for Electors elected at a general election.

Not State Officers: Presidential Electors are not State officers.

State ex rel. Spofford vs. Gifford (1912), 22 Ida., 613, 632; 126 Pac., 1060.

SEC. 461. *Meeting of Electors.* The Electors chosen to elect a President and Vice President of the United States shall, at twelve o'clock noon on the day which is or may be directed by the Congress of the United States, meet at the seat of government of this State, and then and there perform the duties enjoined upon them by the Constitution and laws of the United States.

Cited: State ex rel. Spofford vs. Gifford (1912), 22 Ida., 613; 126 Pac., 1060.

Term of Office: Presidential electors have no regular terms of office, but discharge their duties at one meeting. State ex rel. Spofford vs. Gifford (1912), 22 Ida., 613; 126 Pac., 1060.

SEC. 462. *Same: Notice to Governor: Vacancies.* Each Elector of President and Vice President of the United States shall, before the hour of twelve o'clock noon on the day next preceding the day fixed by the law of Congress to elect a President and Vice President, give notice to the Governor that he is at the seat of government and ready at the proper time to perform the duties of an Elector; and the Governor shall forthwith deliver to the Electors present a certificate of all the names of the Electors; and if any Elector named therein fails to appear before nine o'clock on the morning of the day of election of President and Vice President as aforesaid, the Electors then present shall immediately proceed to elect, by ballot, in the presence of the Governor, persons to fill such vacancies.

Cited: State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

SEC. 463. *Filling Vacancies: Tie Vote.* If more than the number of persons required to fill the vacancies, as aforesaid, have the highest and an equal number of votes, then the Governor, in the presence of the electors attending, shall decide by lot which of said persons shall be elected; otherwise they, to the number required, having the greatest number of votes, shall be considered elected to fill such vacancies.

Cited: State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

SEC. 464. *Notification of Election to Fill Vacancy.* Immediately after such choice is made the names of the persons so chosen shall forthwith be certified to the Governor by the Electors making such choice; and the Governor shall cause immediate notice to be given in writing to the Electors chosen to fill such vacancies; and the said persons so chosen shall be Electors, and shall meet the other Electors at the same time and place, and then and there discharge all and singular the duties enjoined on them as Electors aforesaid by the Constitution and laws of the United States and of this State.

Cited: State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

SEC. 465. *Compensation of Electors.* Every Elector of this State for the election of President and Vice President of the United States, hereafter elected, who shall attend and give his vote for those offices at the time and place appointed by law, shall be entitled to receive the sum of five dollars per day for each day's attendance at such election, and fifteen cents per mile for each mile he shall travel in going to and returning from the place where the Electors shall meet, by the most usual traveled route, to be paid out of the general fund, and the State Auditor shall audit the amount and draw his warrant for the same.

Cited: State ex rel. Spofford vs. Gifford, 22 Ida., 613; 126 Pac., 1060.

CHAPTER XV.

REMOVAL OF COUNTY SEATS AND CHANGING COUNTY BOUNDARIES.

Section

- 466. Time for holding county seat election.
- 467. Petition for removal.
- 468. Same: How signed.
- 469. Petition open to inspection.

Section

- 470. Contesting right to sign petition.
- 471. Same: Procedure in case of contest.

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| 472. Same: Contests have precedence. | 475. Canvass of returns. |
| 473. Voting for removal of county seat. | 476. Same: Result of vote. |
| 474. Same: Challenging voters. | 477. Changing county boundaries. |
| | 478. Conduct of election. |
| | 479. Form of ballot. |

SEC. 466. *Time for Holding County Seat Election.* All elections for the removal of county seats shall be held at the same time and place at which general elections are held.

Cited: Lippincott vs. Carpenter, 22 Ida., 675; 127 Pac., 557.

Cross Reference: Question of removal of county seats to be presented not more than once in six years: Constitution XVIII, 2.

SEC. 467. *Petition for Removal.* Public notice shall be given of the intention to circulate a petition praying for the removal of the county seat of any county from its then present location to some other point within said county, and in said petition designated, at least ten days before the same is circulated, by publication in some newspaper printed in the county (if there be one), and by posting three printed notices in three public places at the county seat, and a like number at the place to which the county seat is proposed to be removed, in which notices the intent of said petition shall be set forth; and all signers to such petition or petitions shall be void and stricken from such petition if procured six months before the first day of the term of court at which the application is to be made; and whenever such petition or petitions, addressed to the District Court of each county, and stating the time when such election shall be held, shall be signed by a number of legal voters of said county, equal in number to a majority of all votes cast at the last general election therein, and shall be filed in the office of the clerk of the District Court of said county, not less than twenty nor more than forty days before the first day of the term of said court next preceding the next general election, unless said term commences after the first day of October, then, in such case, the next preceding term. Such petition shall be deemed a proposal to remove the county seat of such county, and the point designated in said petition shall be deemed and taken as fixed by said petition, in pursuance of law, whenever the court shall order an election to such point as hereinafter provided, as the point to which it is proposed to remove the county seat of such county.

Cross Reference: See Sec. 2, Art. 18, Constitution, page

Qualification of Signers: The signers of the petition for the removal of a county seat need not be registered voters, but merely persons who are qualified to register as voters.

Wilson vs. Bartlett (1900), 7 Ida., 271; 62 Pac., 416.

Same: Determination of Qualifications: When a petition for the removal of a county seat is presented to a court and all the signers of said petition state over their signatures that they are qualified electors of such county, the petitioners make a prima facie case, and no further evidence of the qualifications of such signers is required unless a contestant appears and enters his protest.

If specifications in contestant's affidavit raise no valid objection to the qualifications of any of the signers of the petition, the court is justified in finding, without further proof, that all of the signers of said petition are qualified electors.

Wilson vs. Bartlett (1900), 7 Ida., 271; 62 Pac., 416.

This Section Not Conclusive: By the provisions of this section a petition for the removal of a county seat must be signed by a number of legal voters of such county equal in number to a majority of all votes cast at the last general election, and that provision of the law provides a rule of evidence for establishing a prima facie case, and the court upon that showing would be justified in ordering an election unless it was shown to the court that the number of qualified electors in the county had increased since the last general election, and in that case the petition must contain a majority of the qualified voters as shown by the legal evidence produced on the hearing of such petition.

Lippincott vs. Carpenter (1912), 22 Ida., 675; 127 Pac., 557.

More Than One Application: Under the provisions of the Constitution and statute, more than one application may be made for an order of election for the removal of a county seat, and upon the hearing it is the duty of the court to consider all of such petitions at the same hearing and determine which, if either, contains a majority of the qualified electors of the county.

Lippincott vs. Carpenter (1912), 22 Ida., 675; 127 Pac., 557.

Withdrawal of Names From Petition: Withdrawals from the petition for the removal of a county seat may be made at any time prior to the submission of the petition to the court.

Lippincott vs. Carpenter (1912), 22 Ida., 675; 127 Pac., 557.

SEC. 468. *Same: How Signed.* Each petitioner signing such petition shall write, or cause to be written, opposite to his name on said petition, the name of the city and ward in which he then resides, if he resides in a city; or, if he does not reside in a city, then the name of the precinct in which he resides at the time of signing such petition; and no person shall sign such petition unless he shall be, at the time, a legal voter at general elections.

Cited: Lippincott vs. Carpenter, 22 Ida., 675; 127 Pac., 557.

SEC. 469. *Petition Open to Inspection.* Said petition or petitions shall, after they are filed in the office of the clerk of the District Court of the county, be open to the inspection of any and all citizens of the county, but shall not be removed therefrom.

Cited: Lippincott vs. Carpenter, 22 Ida., 675; 127 Pac., 557.

SEC. 470. *Contesting Right to Sign Petition.* Any citizen and legal voter at general elections in said county may contest

the right of any person whose name is subscribed to said petition, to sign such petition under this chapter, and shall have the right to contest said petition as to any names subscribed thereto that he shall have good reason to believe are fictitious; *Provided*, He shall, ten days before the first day of the term of said court, file in the office of the clerk of the District Court of such county, a list of the names of the persons whose right to sign said petition he is desirous of contesting, together with his affidavit indorsed thereon, that he has good reason to believe, and does verily believe, that such persons named in said list are not legal voters of such county and had no right in law to sign such petition; and shall also file in the office of said clerk, ten days before said term of said court, a list of such names as he has reason to believe are fictitious, together with his affidavit, that he has good reason to believe, and does verily believe, that such names are fictitious; and such persons shall have the right to contest such petitions only as to the names included in said lists.

Cited: Lippincott vs. Carpenter, 22 Ida., 675; 127 Pac., 557.

Affidavit of Contest: The affidavit of a contestant in a county seat removal case, must show that the list of names that he desires to contest, if stricken from the petition, would reduce the number of names on the petition to less than the number required by law to be on such petition; if it does not, the trial court ought to deny the contest and strike the affidavit from its files.

Wilson vs. Bartlett (1900), 7 Ida., 271; 62 Pac., 416.

SEC. 471. *Same: Procedure in Case of Contest*. It shall be the duty of said court, on the first day of and during said term of court, to hear all evidence for and against said petition or petitions as to the lists of names filed in said court under this chapter, and to strike from such petition or petitions all names proven by competent evidence to be fictitious, and the names of persons having no legal right to sign the same under this chapter. In case there shall be no contest, or if the court finds, after striking from said petition or petitions all names proven to be fictitious, and all names not legally signed thereto, that it still contains the number of names of legal voters required by this chapter, the court shall order said election according to the prayer of said petition. In case of a contest to said petition or petitions, it shall be the duty of the clerk of said court, on request of the persons contesting any petition under the provisions of this chapter, to issue subpoenas for such witnesses as said persons shall name; and it shall be the duty of said clerk, on request of any legal voter of the county for the pur-

pose of sustaining any petition, in like manner to issue subpoenas for such witnesses as he shall name, said subpoenas to be made returnable to the term of court at which such contest will be made.

Cited: Lippincott vs. Carpenter, 22 Ida., 675; 127 Pac., 557.

SEC. 472. *Same: Contests Have Precedence.* All cases of contest arising upon said petitions or affidavits shall have precedence over all other cases at said term of said court, and shall be heard and determined at said term, and the decision of the court shall be final.

Cited: Lippincott vs. Carpenter, 22 Ida., 675; 127 Pac., 557.

Right of Appeal: This section was not intended to take away the right of appeal in proceedings of this kind, and by the language, "the decision of the court shall be final," it was intended to indicate that such decision was in harmony with Section 4807 of the Revised Statutes and appealable.

Wilson vs. Bartlett (1900), 7 Ida., 269; 62 Pac., 415.

SEC. 473. *Voting for Removal of County Seat.* The voting for the removal of any county seat shall be by ballot, and each ballot shall have printed or written thereon the words stated in Section 479. Such ballot shall be smaller than the general election ballots, and shall be officially stamped, and there shall be printed or written thereon the words, "County Seat Ballot," and any elector who is registered, as in this title provided, and who, in addition to being qualified to vote for county officers, has resided in the county six months and in the precinct ninety days, shall be permitted to vote for or against the removal of the county seat, by handing to one of the judges of election a county seat ballot, at the same time announcing that he is entitled to vote on the question of the removal of the county seat. If the judges of election are of the opinion that the said elector is entitled to vote on the question of the removal of the county seat, his ballot shall then be deposited in the ballot box, and the clerks of election shall write opposite his name in brackets the words "County Seat" or "County Division," as the case may be.

Cross Reference: Qualifications of voters at county seat elections. Const., Art. XVIII, Sec. 2.

Cited: Lippincott vs. Carpenter (1912), 22 Ida., 675; 127 Pac., 557.

SEC. 474. *Same: Challenging Voters.* Any person who offers to vote on the question of the removal of the county seat may be challenged by any person and for any of the rea-

sons allowed for other challenges, and the rules provided for other challenges shall apply to such challenges.

Cited: Lippincott vs. Carpenter (1912), 22 Ida., 675; 127 Pac., 557.

SEC. 475. *Canvass of Returns.* The returns for county seat elections shall be canvassed by the same officers and in the same manner as the returns for county and precinct officers are canvassed, and the result of the vote for the removal of the county seat shall be officially declared by the county board of canvassers in the following manner:

They shall record the total votes cast in each ward or precinct both for and against the proposed removal, upon the book provided for recording the results of the general election. This record shall be made upon a separate page, or pages, of said book, and after the record is complete and the total result known, they shall make a complete copy of such record, certified to by each member of the board. They shall deposit this certificate with the county auditor, who shall, without delay, file the same with the clerk of the District Court which authorized the election, and the auditor shall also cause a copy of the certificate to be published in some newspaper of general circulation in the county.

Cited: Lippincott vs. Carpenter (1912), 22 Ida., 675; 127 Pac., 557.

SEC. 476. *Same: Result of Vote.* When the attempt has been made to remove the county seat of any county, as in this chapter provided, and the county board of canvassers have found and declared that two-thirds of the voters of the county who have voted for or against such removal have voted in favor of such removal, then said county seat of said county is thereby removed to the point named in the petition.

Cross Reference: Two-thirds affirmative vote required. Const., Art. XVIII, Sec. 2.

Cited: Lippincott vs. Carpenter (1912), 22 Ida., 675; 127 Pac., 557.

SEC. 477. *Changing County Boundaries.* Whenever the Legislature has enacted that a part of any county be stricken off from any county, and annexed to an adjoining county, the provisions of the Constitution being complied with, the qualified electors who have resided ninety days next preceding the first general election after the passage of this chapter within the boundary lines of the territory stricken off and annexed, shall be permitted to vote at said general election, for or against said annexation. If a majority of said electors voting at said election vote in favor of annexation, said territory is

then stricken off and annexed, as provided in this chapter; *Provided*, That all the requirements of the Constitution have been complied with.

Cross Reference: Constitutional requirements, Art. XVIII, Secs. 3, 4.

Cited: Lippincott vs. Carpenter (1912), 22 Ida., 675; 127 Pac., 557.

SEC. 478. *Conduct of Election*. The rules and regulations for voting at county seat elections, as provided in this chapter, so far as they apply to ballots, voting, challenging, canvassing the returns and declaring the result, shall apply to elections for the striking off of any part of any county and annexing the same to any adjoining county.

Cited: Lippincott vs. Carpenter (1912), 22 Ida., 675; 127 Pac., 557.

SEC. 479. *Form of Ballot*. It shall be the duty of the auditor of the county wherein it is proposed to hold an election for the removal of the county seat, or changing county lines, to cause to be printed separate ballots at the same time and in the same manner as ballots for the general election are printed.

Such separate ballots shall be three inches square, or as near this size as practicable, and on one side there shall be printed the following words:

For removal of the county	}	No.
seat to -----		Yes.
For changing county lines	}	No.
		Yes.

(As the case may be.)

And the auditor shall send an equal number of these special ballots, with the ballots furnished for the general election, to each voting precinct of the county and at the same time.

Cited: Lippincott vs. Carpenter (1912), 22 Ida., 675; 127 Pac., 557. Whitla vs. Quarles (1908), 15 Ida., 604; 98 Pac., 631.

Not Effected by General Election Statute: This statute is still in force and effect in reference to the size, form and manner of preparation of ballots for county seat removals. Whitla vs. Quarles (1908), 15 Ida., 604, 98 Pac., 631.

CHAPTER XVI.

SPECIAL ELECTIONS AND VACANCIES.

Article

1. Special elections.

Article

2. Vacancies.

ARTICLE 1. SPECIAL ELECTIONS.

Section	Section
480. Conduct of special elections.	483. General election law applicable.
481. Meeting of canvassing board.	
482. Same: Time of meeting.	484. Notice of special election.

SEC. 480. *Conduct of Special Elections.* Special elections shall be conducted and the results thereof canvassed and certified in all respects, as near as practicable, in like manner as general elections, except as otherwise provided; but special elections shall not be held, unless when required by public good, and in no case within ninety days next preceding a general election.

Cross References: Special elections to fill vacancies in the Legislature, Sec. 325. In office of Representative in Congress, Sec. 326. County bond elections, Secs. 1968-1972 inc.

SEC. 481. *Meeting of Canvassing Board.* In all cases where special elections are to be held to fill vacancies in offices, the board of canvassers shall meet at twelve o'clock noon on the third day after such election, to canvass the votes cast at such election, and the county auditor, within four days after any special election for a member of the Legislature, or Representative in Congress, shall transmit to the Secretary of State an abstract of the votes cast at said election, if there be more than one county in the district.

SEC. 482. *Same: Time of Meeting.* Within ten days after said election in the case last mentioned, the board of state canvassers shall meet and canvass the votes cast to fill such vacancy, and if the returns have not been received from all the counties composing said district, they may adjourn to such day as they deem necessary, not exceeding five days, for the purpose of receiving said returns.

SEC. 483. *General Election Law Applicable.* The provisions relating to general elections shall govern special elections, except where otherwise provided for.

Local Option: The provisions of the General Election Laws apply to the local option statutes.

Gillesby vs. Board (1910), 17 Ida., 586, 597; 107 Pac., 71.

Cited: *Gillesby vs. Comrs. of Canyon County* (1910), 17 Ida., 586; 107 Pac., 71; Ann. Cas., 1913B, 17, 23, 24; 1916D, 62.

SEC. 484. *Notice of Special Election.* Whenever a special election is ordered by the board of commissioners, notice must

be issued and posted in the same manner as for a general election.

ARTICLE 2. VACANCIES.

Section	Section
325. Vacancy in legislative office: special election.	325a. Vacancy: U. S. Senator. 326. Same: Representative in Congress.

SEC. 325. *Vacancy in Legislative Office: Special Election.* When a vacancy occurs in the office of a member of the Legislature, and the body in which such vacancy exists is in session, or will convene prior to the next general election, the Governor shall order a special election to fill such vacancy at the earliest practicable time, and ten days' notice of such election shall be given.

Cross Reference: Conduct of Special Elections, Secs. 480-484.

SEC. 325a. *Vacancy: U. S. Senator.* That whenever any vacancy shall occur in the office of United States Senator from the State of Idaho by death, resignation or otherwise, the Governor shall have the power and is hereby authorized and empowered to fill such vacancy by appointment, and the person so appointed shall hold such office until such time as a United States Senator is regularly elected to fill such vacancy, at the next succeeding general election, and qualifies by virtue of such election: *Provided, however,* That in case a vacancy occurs in the position of United States Senator from the State of Idaho within thirty days of any general election, no election for United States Senator to fill said vacancy shall be held at such general election.

Laws 1917, Ch. 27, Sec. 1.

SEC. 326. *Same: Representative in Congress.* Whenever any vacancy shall occur in the office of Representative in Congress from the State, it shall be the duty of the Governor to appoint a day to hold a special election to fill such vacancy, and cause notice of such election to be given as required in Sections 354 and 355 of these Codes.

CHAPTER XVII.

ELECTIONS FOR ERECTION OF PUBLIC BUILDINGS.

Section		Section	
1932.	Erection of Court House: Bond election.	1934.	Statutes governing election and bond issue.
1933.	Purchase of site and letting of contract.		

SEC. 1932. *Erection of Court House: Bond Election.* Whenever the interests of any county require it, and the Board of Commissioners of the county deem it for the public good to purchase a site and erect thereon a court house and jail, or either thereof, and furnish the same; and the expense of purchasing such site, or erecting such buildings of suitable size and capacity and furnishing the same would exceed the revenue of one year applicable to that purpose, and the board deems it for the public good to bond the county for the purpose of providing funds therefor, the Board of Commissioners may, by a resolution adopted at a regular or any special meeting called for that purpose, call a special election for such purpose, or submit, at any general election, the question of issuing negotiable coupon bonds to an amount deemed necessary to defray the expenses of purchasing such site and erecting and furnishing such buildings.

Cited: Bannock County vs. Bunting (1894), 4 Ida., 156; 37 Pac., 277; McNutt vs. Lemhi County (1906), 12 Ida., 63; 84 Pac., 1054.

Construction with Constitution: Under the provisions of this section a bridge cannot be built at a cost exceeding \$1,000.00 unless one-third of the taxpayers who are voters petition therefor, but since the adoption of the Constitution this provision has been changed and only applies when the revenue for the fiscal year is not exceeded, for if such cost exceeds the revenue for the fiscal year, the bridge cannot be built without a two-thirds vote. Dunbar vs. Board of County Commissioners (1897), 5 Ida., 407; 49 Pac., 409.

Advertisement for Bids: In the matter of advertising for bids and letting contracts for public buildings or improvements, the provisions of this section must be substantially followed, and before a Board of County Commissioners can legally advertise for competitive bids for the erection of a bridge, they must adopt plans and specifications of such bridge. Any contract made without adopting such specifications, or made when the specifications have been adopted after publication of the notice is void. Andrews vs. Board of Commissioners (1900), 7 Ida., 453; 63 Pac., 592.

Successful Bidder: The contract must be let to the lowest responsible bidder. Andrews vs. Board of Commissioners (1900), 7 Ida., 453; 63 Pac., 592.

SEC. 1933. *Purchase of Site and Letting of Contract.* If two-thirds of the qualified electors of the county voting at such

election, vote in favor of the issuance of the bonds, the Board of Commissioners shall select and purchase, or, if necessary, cause to be condemned, for the use of the county, a suitable site for said buildings, and cause to be prepared plans and specifications for such court house and jail, or either thereof as the case may be, and advertise in a weekly newspaper of the county for thirty days calling for sealed proposals or bids for the construction of said buildings. The published notice shall contain a general statement of the character and limited cost of the building or buildings, and state that the plans and specifications thereof may be found and examined in the office of the clerk of the board, and state the day when the sealed proposals will be opened and considered. The sealed proposals must be opened and considered publicly, and the contract let to the lowest responsible bidder, unless all bids are rejected; and if all bids are rejected, the board may advertise for new bids, or let the contract, provided it be for a less sum than that offered by the lowest bidder. The board must require a good and sufficient bond of the contractor conditioned for the faithful performance of the contract according to the plans and specifications. The board shall have full power and authority to do and perform any act in relation to purchasing such site and erecting said buildings, at any special or called meeting when all members of the board are present, or at any regular meeting of the board.

SEC. 1934. *Statutes Governing Election and Bond Issue.* The board shall be governed in calling and holding said election, and in the issuance and sale of said bonds, and in providing for the payment of the interest thereon, and for their redemption, by the provisions of Article 6 of this chapter, being Sections 1960 to 1972, inclusive, of these Codes.

CHAPTER XVIII.

COUNTY BOND ELECTIONS.

Section	1972a. Road bonds: Establishment
1968. Notice of bond election.	of special assessment districts: Election.
1969. Conduct of election: Application of election law.	1972b. Form of ballots.
1970. Officers of election: Canvass of returns.	1972c. Election: Two-thirds vote necessary.
1971. Form of ballot.	Section
1972. Voting on bonds at general election.	1972d. Issuance of bonds: Assessments.

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| 1972e. Assessments against special tax districts. | 1972i. Lien of tax in special tax districts. |
| 1972f. Same: Appeal to District Court. | 1972j. Funding bonds. |
| 1972g. Levy in special tax districts. | 1972k. Special tax districts not exempt from general taxation. |
| 1972h. Same: Levies by County. | |

SEC. 1968. *Notice of Bond Election.* If the question of bonding the county as herein provided, is to be submitted to the voters of the county at a special election held for that purpose, the board shall cause printed or written notices of the intention to hold such an election to be posted in two or more conspicuous places in each precinct of the county, and shall also cause a printed notice of the intention to hold such an election to be published in one or more newspapers of the county, if any newspapers are printed therein. The said notices shall recite the action of the board in deciding to bond the county, the purpose thereof, and the amount of the bonds that are to be issued, and shall also specify the day of the election, the time during which the polls shall be open, which shall not be less than six hours; the notices posted in each of the several precincts shall also name the place of holding such election. The notices herein provided for shall be posted, or posted and published, at least twenty days before such election. Every person over the age of twenty-one years, who is a citizen of the United States, and shall have resided in the State six months, and in the county thirty days immediately preceding the election at which he offers to vote, shall be entitled to vote at such election.

Laws 1909, page 189.

Recitals of Notice: It is not necessary to specify in the notice of a county bond election the particular roads and bridges which are to be built or repaired by the proceeds realized from the sale of the bonds. *Independent Highway District vs. Ada County* (1913), 24 Ida., 416; 134 Pac., 542.

Cross Reference: Notice of Bond Election: See Sec. 1962, Revised Codes.

Cited: (On rehearing) *Gilbert vs. Canyon Co.* (1908), 14 Ida., 437; 94 Pac., 1029.

SEC. 1969. *Conduct of Election: Application of Election Law.* Such election shall be held in all respects in conformity with the general election laws so far as the same may be applicable, except as herein provided, but all that part of the general election law relative to the apportionment of registrars and the registration of voters, the appointment of judges and clerks, and the establishment of voting booths and printing of

an official ballot, and providing for an official stamp, and method of voting as provided in Sections 423, 424 and 425 of the General Election Law, shall not apply.

SEC. 1970. *Officers of Election: Canvass of Returns.* The board of county commissioners shall appoint two judges and one clerk of election in each precinct, for the purpose of holding such election, and upon the failure of either to act, the electors present at the opening of the polls may fill vacancies. Such judges and clerk conducting such election shall make return of such election to the board of county commissioners, within three days after such election is held. The returns for bond elections shall be canvassed in the same manner as the returns for election of county and precinct officers are canvassed, and the result of the vote shall be officially declared by the county board of canvassers in the following manner: They shall record the total vote cast in each precinct for and against the proposed issue of bonds, in the book provided for recording the results of the general election, and shall make a complete copy of such record, duly certified to by them, and shall deposit the same with the auditor of the county.

Cited: Bryan vs. Montandon (1898), 6 Ida., 352; 55 Pac., 650.

SEC. 1971. *Form of Ballot.* Such election shall be by ballot. The ballot shall be of white paper, three inches square, and shall contain the words: "Bond. Yes." "Bond. No." and shall have printed at the top the following instruction: "If the voter desires to vote for the issue of bonds, he shall strike out the word 'No.' If he desires to vote against the issue, he shall strike out the word 'Yes'." The auditor of the county shall cause the ballots to be printed and distributed, and shall send a sufficient number to the judges appointed in the several precincts.

SEC. 1972. *Voting on Bonds at General Election.* The special election herein provided for, may be held at the same time and place at which the general election is held, and the officers at the general election in each precinct may serve as officers of the special election, but the notices of the election must be given, and the tickets printed and distributed as herein prescribed; the ticket when voted, shall be deposited in a separate box provided for its reception; the return of the vote by the judges of election shall be on a separate sheet from the return

of the general election, and shall be canvassed as hereinbefore provided for.

Cited: Independent Highway District vs. Ada County (1913), 24 Ida., 416; 134 Pac., 542.

Cross Reference: Notice of Bond Election: See Sec. 1968, Revised Codes.

SEC. 1972a. *Road Bonds: Establishment of Special Assessment Districts: Election.* Whenever it shall be proposed to issue bonds of a county for road purposes, as authorized by law, the Board of Commissioners for such county may, in their discretion, propose by resolution that the revenues to be raised by taxation to enable such county to pay the principal and interest of such bonds shall be raised in part by special taxation therefor upon the land adjoining the roads constructed with the proceeds of such bonds, and may pass a resolution which shall provide as follows:

(a) That it is proposed that the revenues to be raised by taxation to enable such county to pay the principal and interest of such bonds shall be raised in part by special taxation therefor upon the land adjoining the roads constructed with the proceeds of such bonds; and that, of the entire bond issue (stating the amount), it is proposed to provide for a portion not exceeding a certain amount (stating such maximum amount in dollars) by special taxation therefor upon adjoining land.

(b) That, for such purpose, special tax districts shall be created along the line of construction of such roads, extending not more than a specified distance (which shall not be greater than one (1) mile) on each side of such roads; that so nearly as may be practicable such special tax districts shall be generally rectangular in form, or composed of generally rectangular units, following generally the course and direction of the road and observing, so far as is reasonably practicable, the requirement and principle that all the land within any special tax district shall be land lying generally along the course and direction of such road and extending within the limits of a specified distance back therefrom, but that absolute uniformity shall not be required in the application of such requirement and principle; that such specified maximum distance shall be the same in all the special tax districts created in respect to such bond issue; that the aforesaid maximum distance from the road may be enlarged in any special tax district in case any of the land lying between the road and the boundary of such district would, if confined within such distance, be made to

include land under water or land not subject to taxation by counties, or land unfit for use and cultivation and not having value sufficient to justify the imposition of special taxation thereon, and that, in such case, land lying beyond such land may be included within such special tax district in lieu thereof; and that the judgment of the Board of Commissioners as to all the matters herein specified shall be made in the exercise of their taxing power as an executive authority, and shall be conclusive, except as the same may be reviewed by the District Court as provided in Section 1972f of this Act.

(c) That the land within such special tax districts shall be charged with not more than a certain maximum percentage, specified in the resolution (but not exceeding fifty (50) per cent), of the cost of that part of every road constructed with the proceeds of such bond issue which shall lie within such special tax districts, respectively; and that the amount of such special tax therefor per acre shall not exceed a certain specified amount for any single earth road, nor a certain specified amount for any single stone road, nor a certain specified amount for any single road of other material, together with the yearly interest thereon; except that, if it is not proposed to build earth roads, the reference to earth roads shall be omitted; if it is not proposed to build stone roads, the reference to stone roads shall be omitted; and if it is not proposed to build roads of other material, the reference to roads of other material shall be omitted.

(d) That such special tax against land within such special tax districts shall in no case be levied or charged against such land until the road for which such special tax is imposed shall have been constructed to within one (1) mile of such land, the cost thereof certified and the road accepted by the Board of Commissioners.

(e) That so much of such special tax as is required to pay the interest on the portion of the bonded debt for which the land within any such special tax district is specially taxed shall be payable in each year, and that so much of such special tax as is required to pay the principal of the portion of the bonded debt for which such land is specially taxed shall be payable at the same times as the general taxes levied in the county to provide for the principal of such bonds, and shall be extended over the same number of years and subject to the same provisions in respect to funding and refunding, except as in this Act otherwise provided.

(f) That all land within such special tax districts shall also be subject to the same taxation at the same rate as other property in the county for the purpose of meeting the principal and interest requirements of that portion of such bond issue which is not charged against adjoining property but is paid by the county as a whole.

All the provisions of such resolution shall be observed and followed in the issuance of such bonds and in all acts and proceedings of the county or Board of Commissioners in respect thereto. The provisions of Sections 1960 to 1972, inclusive, of the Revised Codes, except so far as other special provision is made therefor in Sections 1972a to 1972k, inclusive, of this Act, shall apply in respect to the bonds issued as provided in this section and to the procedure thereon.

Laws 1911, page 588.

SEC. 1972b. *Form of Ballots.* At the election upon the question of issuing such bonds, the ballots shall be in substantially the following form:

“In favor of issuing bonds to the amount of_____ Dollars for the purpose stated in Resolution of_____. 19____”; and “Against issuing bonds to the amount of _____Dollars for the purpose stated in Resolution of_____, 19____”; and “Shall a portion of the indebtedness created by such bond issue, not exceeding _____Dollars thereof, be charged against the land adjoining the roads built with the proceeds of such bonds, such portion to be paid by special tax on such adjoining lands, running over the same number of years as the bonds themselves; such special tax not to exceed (exclusive of interest) for a single road_____.Dollars per acre for earth roads, _____Dollars per acre for stone roads or _____Dollars per acre for roads of other materials, and not to be levied or assessed against such adjoining lands until such roads have been built to within one (1) mile thereof? Yes. No.”

The blanks in such ballots shall be properly filled before printing the same, in accordance with the resolution of the Board of Commissioners provided for in Section 1972a hereof; except that if it is not proposed to build earth roads, the reference to earth roads shall be omitted; if it is not proposed to build stone roads, the reference to stone roads shall be omitted;

and if it is not proposed to build roads of other materials, the reference to roads of other materials shall be omitted.

Laws 1911, page 590.

SEC. 1972c. *Election: Two-thirds Vote Necessary.* In order to authorize the issue of any bonds under the resolution provided for in Section 1972a hereof, at least two-thirds of the ballots voted at such election whereon the elector has voted on the question of issuing bonds, must be in favor thereof; and in order that a portion of the indebtedness to be created by such bond issue shall be charged and assessed against adjoining land within the special tax districts, at least a majority of the ballots voted at such election whereon the voter has voted on the question of charging a portion of the indebtedness against adjoining land must be in favor thereof; but the defeat of the latter proposal shall not have the effect of defeating the proposal to issue bonds if the proposal to issue bonds has itself been carried by a two-thirds vote. If the proposal to issue bonds be carried as above provided and the proposal to charge part of the indebtedness upon adjoining land be defeated, then the bonds may be issued, and, in such case, all proceedings had in respect thereto shall be conducted as in Sections 1960 to 1972, inclusive, of the Revised Codes, except as the proceedings to that point may have been modified as in Sections 1972a, 1972b, and 1972c of this Act provided, and thereafter, Sections 1972d to 1972k, inclusive, of this Act shall not be applicable in respect to such bond issue. But, if the proposal to charge part of the indebtedness created by such bond issue against adjoining land be also carried as herein provided, then Sections 1972d to 1972k hereof, inclusive, shall be applicable in respect to the proceedings had on such bond issue.

Laws 1911, page 591.

SEC. 1972d. *Issuance of Bonds: Assessments.* In case such vote be in favor of charging part of the indebtedness to be created by such bond issue against adjoining land, the bonds may be issued and the proceedings shall be had thereunder (except as to the form of ballots) as in Sections 1960 to 1972, inclusive, of the Revised Codes provided, except where other special provisions on the subject are made in Sections 1972d to 1972k, inclusive, of this Act. All such bonds shall be as between the county and the bondholders the direct and primary obligation of the county for the full amount of the principal and interest thereof; but the county shall, as between the coun-

ty and the owners of lands within the special tax districts herein provided for, assess and collect from such lands or the owners thereof an amount of money sufficient to reimburse the county to the extent of the proportion of such bonded debt that has been charged against the lands in such special tax districts as herein provided.

Laws 1911, page 591.

SEC. 1972e. *Assessments Against Special Tax Districts.* As fast as any road built with the proceeds of such bond issue is built and completed within an area of land which, under the resolution of the Board of Commissioners provided for in Section 1972a hereof, may be created a special tax district, and when such road has been accepted by the Board of Commissioners and the Board of Commissioners have certified to the cost of such road so far as such road lies within such special tax district, then the Board of Commissioners shall, by order, create such special tax district and shall fix and designate the boundaries thereof in conformity with the requirements and principles specified in Section 1972a hereof, and shall designate the portion of the cost of such road to be charged against the land in such special tax district (not exceeding the maximum percentage specified in their original resolution), and shall thereupon fix and determine the amount per acre thereby charged against such lands within such special tax district (not exceeding, in respect to any single road, the maximum amount per acre specified for a road of that material in the original resolution); such amount per acre need not be the precise proportionate cost of such road but may be the approximate proportion, avoiding inconvenient fractions or fractional parts of a dollar, and shall be the same uniform amount per acre throughout any single special tax district. The Board of Commissioners shall include as part of the cost of such road the fair and reasonable portion of overhead charges properly applicable thereto. From time to time, as roads or portions of roads are completed and accepted and the cost thereof certified, the Board of Commissioners shall create the proper tax districts therefor. In respect to each such special tax district created under this Act, the Board of Commissioners is hereby constituted the local executive authority of each such special tax district, severally, with authority in respect to each such district to levy the special tax herein provided for, such authority being confined in each such district to the limits of such district, and within such limits, the special

tax in each such special tax district shall be at a uniform amount per acre throughout such special tax district. The order of the Board of Commissioners creating such special tax district and fixing and determining its boundaries, stating the number of acres therein, fixing the amount of the indebtedness created by such bond issue which is charged against the land in such special tax district and the amount per acre to be specially taxed against the land therein, shall be entered at length on the minutes of the Board of Commissioners and shall be open to public inspection, and a notice stating generally the nature and date of such order and designating the townships and sections within such special tax district shall be published for at least two (2) publications in a newspaper published in the county; and, on the filing with the clerk of the Board of Commissioners of proof of such publication, such order shall be deemed complete, and the making of such order and the publication of such notice shall be deemed notice to all the world thereof.

Laws 1911, page 592.

SEC. 1972f. *Same: Appeal to District Court.* Within thirty (30) days after such filing, but not after the expiration of such thirty (30) days, any owner of land within such special taxing district may file in the office of the clerk of the Board of Commissioners a copy of a verified petition in a proceeding in the District Court of the district for the review of such order, specifying the grounds of objection thereto. At the expiration of such thirty (30) days, all such proceedings relating to the same special tax district wherein copies of petitions for review have been duly filed shall be consolidated by order of the District Court into a single proceeding, and such notice shall be given and such procedure followed therein as the District Court shall prescribe; and such District Court shall have jurisdiction as a court of equity and without a jury to try and determine such proceeding; on such review, the only question to be tried and determined shall be whether, in creating such special tax district and in fixing the amounts so charged against the land therein, the Board of Commissioners have observed the requirements and principles specified in Section 1972a hereof, and the District Court shall, if it determine that the Board of Commissioners have materially departed from such requirements and principles, make a final order in such proceeding directing any necessary change or modification in the order of the Board of Commissioners, and the Board of Commis-

sioners shall thereupon make such changes and modifications in their order, and the changed or modified order shall be submitted to the District Court and finally made as directed and approved by such court; if, in such proceeding, the District Court shall determine that the Board of Commissioners have not materially departed from the said requirements and principles, it shall affirm the order of such board. On the expiration of thirty (30) days from the date of the Board of Commissioners' original order without any copy of a petition for review having been filed as herein provided, or on the filing with the clerk of the Board of Commissioners of the order of the District Court in the proceeding for review affirming such order, or on the filing with such clerk of the new order of the Board of Commissioners embodying the changes and modifications directed by the District Court in such proceeding for review, with the written approval of the court subjoined thereto, as the case may be, such order shall be final and conclusive against all the world in respect to all the matters and things therein contained.

Laws 1911, page 593.

SEC. 1972g. *Levy in Special Tax Districts.* When such order of the Board of Commissioners has become final and conclusive, as in Section 1972f hereof provided, the Board of Commissioners shall thereupon levy upon all the land within the special tax district created by such order a special tax equal in amount to the amount so charged in such order against such special tax district, specifying the amount per acre thereof, and the clerk of the Board of Commissioners shall thereupon transmit to the assessor and tax collector of the county a certified copy of such levy and of the order creating such district; and, on receiving the same, the county assessor shall thereupon assess against the land in such special tax district the amount so levied; but the same shall not be collected except as installments thereof shall thereafter be called for by the annual levies made by the Board of Commissioners of the taxes necessary to meet the requirements of such bonds. The existence of such assessment against land in the special tax districts shall not be held to constitute a cloud upon the title thereof, nor as a breach of a covenant of warranty, nor of a covenant of title, nor of a covenant against encumbrances in a deed or contract for such land, nor as rendering the title to such land unmarketable. The special tax herein authorized within such special tax districts is a tax for the purpose of securing for such special tax

districts the benefit of local roads within the limits thereof, as distinguished from the general purpose of the bond issue as a whole of securing the benefit of a system of roads for the county at large.

Laws 1911, page 594.

SEC. 1972h. *Same: Levies by County.* No special tax or charge shall be made by the county against land within a special tax district until the road has been completed to within at least one (1) mile of all the land within such special tax district and the road has been accepted by the Board of Commissioners and the cost thereof certified and all the proceedings taken thereon as herein specified; and all interest payable on the bonds up to that time shall be paid by the county without imposing on such special tax district a special tax therefor other than its share in the taxation of the county as a whole; but, after such special tax has been levied as in Section 1972g hereof provided, the Board of Commissioners shall, in each year, at the same time that they levy the tax to meet the interest requirements of such bonds, levy also a special tax on the lands within every such special tax district then created sufficient in amount to pay the interest for that year on the portion of such bond issue the indebtedness whereof shall have been charged against such special tax district as herein provided; and whenever the Board of Commissioners shall levy a tax to meet any principal or sinking fund requirements of such bonds, they shall, at the same time, levy also a special tax on the land within every such special tax district then created sufficient in amount to pay the principal or sinking fund requirements for that year on the portion of such bond issue, the indebtedness whereof shall have been charged against such special tax district as herein provided. All such special taxation within any single special tax district shall be of a uniform amount per acre within such special tax district. Each installment of principal or sinking fund taxation collected from any land within a special tax district shall be credited on the original assessment of special tax made thereon as in Section 1972g hereof provided, and when all such installments shall have been paid, such special assessment shall be deemed cancelled, paid and discharged. No special tax district, nor any land therein, shall ever be called upon to pay as such special taxes any sum greater than the amount charged against such district or such land in such original special assessment, and its proportionate share of interest thereon. In making the levy for the require-

ments of such bonds, the Board of Commissioners shall levy on the county at large only such amount of taxes in each year as shall be required to meet the requirements for that year of that portion of the bond issue which has not been charged against the special tax districts; but should such levy, together with the levies on the special tax districts in any year, fail to produce sufficient funds to meet the obligation of the county on the whole issue, then such deficiency shall be paid out of the other revenues of the county, and, if necessary, the bond levy shall be increased in the following year to make good such deficiency; and no failure or delay on the part of the county in imposing, levying or collecting the special taxes herein provided for shall, as between the county and the bondholders, impair the obligation of the county upon the whole of such bonds.

Laws 1911, page 594.

SEC. 1972i. *Lien of Tax in Special Tax Districts.* The land within each special tax district is hereby charged with a lien in favor of the county to the extent of the entire amount of all special taxes levied on the land within such special tax district in accordance with the provisions of this Act. The amounts so levied, both as to principal and interest, shall be assessed and collected by the tax collector as other taxes in the county are assessed and collected, and all the general provisions of law shall apply to the collection thereof and the rights and remedies in respect thereto. Such portion of the amount of any bond issues of any county shall, in accordance with the provisions of Section 1972g hereof, have been assessed and charged against land within special tax districts shall be deducted and excluded in computing any bond limit of the county that may be imposed by law.

Laws 1911, page 596.

SEC. 1972j. *Funding Bonds.* Should any bond issue, whereof the indebtedness has been charged in part against adjoining property as herein provided, be funded or refunded, so that a sinking fund for the original issue is not required to be established, then the annual levy for sinking fund requirements need not be made upon the land in the special tax districts created in respect to such bond issue; or, at the option of the Board of Commissioners, a portion of such bond issue, to meet which a sufficient amount has been charged against such special tax districts, may remain without refunding and shall thereafter be

paid and retired with the proceeds of the special taxes on the land within such special tax districts, and if such proceeds prove temporarily insufficient therefor, then from the other revenues of the county. If the whole of an issue be refunded and new bonds issued therefor, then the land within such special tax districts shall continue to be specially taxed for its portion of the new bonds, equal in amount to its portion of the refunded issue, *pari passu* both as to principal and interest with the taxation of the county at large for such bond purposes; *Provided*: That, on the funding of any issue of bonds issued as provided in Section 1972a hereof, then, on receiving from the county treasurer of the county a certificate, under the seal of the county, signed by the county treasurer and either by the chairman or by the other members of the Board of Commissioners that such bonds have been actually funded and retired, the special assessment made against the land within the special tax districts created for such bond issue as provided in Section 1972g shall be cancelled, vacated and annulled and a new special levy of the same amount shall be assessed against the land in such special tax districts in respect to the new or refunding bonds.

Laws 1911, page 596.

SEC. 1972k. *Special Tax Districts Not Exempt from General Taxation.* All land within such special tax districts shall also be subject to the same taxation at the same rate as other property in the county for the purpose of meeting the principal and interest requirements of that portion of such bond issue which is not charged against adjoining property but is paid by the county as a whole; it being the intent of this Act that all bonds issued by a county as provided in Section 1972a hereof, shall, as to a specified portion of the indebtedness thereby created, not exceeding fifty (50) per cent, be met and paid by special taxation upon the land adjoining the roads built with the proceeds of such bonds, not exceeding a specified sum per acre, and as to the remaining portion thereof, shall be met and paid by taxation of all property in the county, including the property within such special tax districts, and including all property within any incorporated cities (whether incorporated under general or special Act), towns and villages included within the limits of such county.

Laws 1911, page 597.

CHAPTER XIX.**MUNICIPAL ELECTIONS.**

Section	Section
2245. Time for holding elections.	2251. Registration: Time.
2246. Notice of election.	2252. Compensation of registration officers.
2247. Filling vacancies among judges and clerks.	2253. Application of preceding sections.
2248. Qualifications of electors.	2254. Certificates of election.
2249. City Clerk is registrar.	2255. General registration and election laws apply.
2250. Registration books and electors' oaths.	

SEC. 2245. *Time for Holding Elections.* On the fourth Tuesday of April, 1915, and biennially thereafter, an election shall be held in each city and village governed by this title, for officers as in this title provided. All of such officers shall be elected and hold their respective offices for a term of two years, and until their successors are elected and qualified. At said election the qualified voters of such city may cast their ballots between the hours of nine o'clock a. m. and seven o'clock p. m.

Laws 1913, page 423.

Cited: Vineyard vs. City Council (1908), 15 Ida., 436; 98 Pac., 422.

SEC. 2246. *Notice of Election.* The board of trustees shall give public notice of the time and place of holding each election; said notice to be given not less than ten nor more than twenty days previous to the election.

SEC. 2247. *Filling Vacancies Among Judges and Clerks.* If, on any day appointed for holding any election under the provisions of this title, any of the judges or clerks of election shall fail to attend, the electors present may fill such vacancies from among the qualified electors present.

SEC. 2248. *Qualifications of Electors.* All qualified electors of this State who shall have resided within the limits of any city of the second class, or village, for three months preceding any election therein, shall be entitled to vote at all city and village elections, provided such elector is registered as provided by law.

Laws 1913, page 425.

SEC. 2249. *City Clerk is Registrar.* The city or village clerk of every city or village in the State of Idaho shall be the registrar for the registration of voters in such city or village, who shall perform the same duties in the capacity as registrar, as

nearly as may be, as are required of registrars of election for State and county elections under the general laws of the State.

Laws 1913, page 426.

Registration: Special registration for municipal elections is not required. Attorney General's opinion, 1913-1914, p. 37.

SEC. 2250. *Registration Books and Electors' Oaths.* The city or village clerk, as the case may be, shall provide, at the expense of the city or village, registration books, blank electors' oaths and all other election supplies of every kind, in form similar to those used for county and State registrations, and elections with such changes and substitutions made therein as may be necessary to carry out the provisions of this chapter.

Laws 1913, page 426.

Cross Reference: Elector's oath: See Chapter IX, Sec. 396. Form of registration books: See Chapter IX, Sec. 394.

SEC. 2251. *Registration: Time.* The city or village clerk, as the case may be, shall register electors for city or village elections at any time during office hours, the same as is provided by law for registration for State and county elections. The city or village clerk, as the case may be, in addition to other duties required of him, shall perform all the corresponding duties in connection with the city or village elections and registrations as are required by law to be performed by the clerk of the District Court for state and county registrations for elections.

Laws 1913, page 426.

Cross Reference: Registration notices, books and supplies: Chapter IX, Sec. 394.

SEC. 2252. *Compensation of Registration Officers.* There shall be no charge by the city or village clerk, or any of their deputies for the registration of any elector; the city or village clerk shall perform the duties imposed upon him by law with reference to the registration of electors and conduct of elections without extra compensation outside of his salary therefor; *Provided, however,* That for the purpose of compiling the lists of voters for voting precincts or wards, just prior to any election, the city or village council or board of trustees, as the case may be, may, in its discretion, employ assistance for the village clerk to perform such duty. *Provided, further,* That whenever the necessity therefor shall exist in any city or village the city council, or board of trustees, as the case may be, may, in its discretion, appoint sufficient deputy registrars to assist

the city or village clerk, as the case may be, in the registration of the electors of such city or village, but there shall be no more deputy registrars appointed in any city or village than there are wards, or voting precincts, situated therein, and each deputy registrar so appointed shall have the right to perform his duties as registrar in any portion of the city or village, as the case may be. Such deputy registrars shall be appointed not more than thirty days immediately preceding any city or village election. The compensation to be paid any person, or persons, for duties to be performed, or services rendered under the provisions of this section, shall be paid as other current expenses of the city or village are paid, and no larger or greater sum shall be paid therefor, than as authorized for the payment of similar services under the general registration laws of the State.

Laws 1913, page 426.

Cross Reference: Compensation of Registrar: Chapter IX, Sec. 401.

SEC. 2253. *Application of Preceding Sections.* The provisions of this chapter shall not apply to cities having special charters, which provide for registration.

Laws 1915, page 20. Formerly Laws 1913, page 427.

SEC. 2254. *Certificates of Election.* Certificates of election for all officers of cities and villages shall be made out, under the corporate seal, by the city council or board of trustees, at their first meeting after any election of such officers.

Council as a Canvassing Board: As to the power of a city council sitting as a board of canvassers to go behind the returns and where questions as to the irregularities of the proceedings, if any, prior to the election in said city are raised, I will say, the courts have uniformly held in a long line of decisions that: "Canvassing Boards, in casting up the returns of an election, act in a purely ministerial capacity, and have no power to go behind the returns, and reject those regular on their face and not shown to be spurious." It is the duty of your board to issue certificates of election to the parties who appear from the face of the returns to have the majority of votes cast. Attorney General's opinion, 1909-1910, p. 80.

SEC. 2255. *General Registration and Election Laws Apply.* All elections held in villages or cities as provided for in this title shall be conducted in the manner and form as provided by the general election laws of the State, for State and county registration and elections, with the necessary changes and substitutions, except as herein otherwise provided; and all matters and things with reference to the registration of voters not specifically provided for in this chapter shall be done in ac-

cordance with the general laws of the State for State and county elections, the necessary substitutions and changes being made.

The city or village clerk, as the case may be, shall, from the registration lists showing the voters registered and voting at the biennial election held in April, 1913, prepare such lists of voters for such city or village as are required, under the general registration and election laws of the State, to be prepared and kept by the clerk of the District Court for State and county registrations of voters and elections; and when said lists are so prepared by the city or village clerk, the city or village clerk shall perform the same duty with reference to keeping said lists up to date, as is required of the clerk of the District Court under the general registration, and election laws of the State, in case of registration of voters for the State and county elections.

It shall not be necessary for any voter who is registered and votes at the biennial city or village election held in April, 1913, in any city or village in the State, except as herein otherwise provided, to register in order to vote at any succeeding general or special city or village election, held in such city or village so long as such elector continues to vote at each biennial election, held after the biennial election held in April, 1913, for the election of city or village officials; *Provided*, That such elector has continued to live in the same city, ward or precinct or has properly transferred from such city or village, ward or precinct to another city or village, ward or precinct, in compliance with the requirements with reference thereto as provided by the general laws of the State with reference to registration of voters and conduct of elections.

Laws 1913, page 427.

Cross Reference: General election law: Title 3, Revised Codes.

CHAPTER XX.

MUNICIPAL BOND ELECTIONS.

Section

2315. Purposes for which bonds may be issued.

Section

2316. Bond ordinance and election.

2330. Street improvement bonds: Election.

SEC. 2315. *Purposes for Which Bonds May Be Issued.* (b) Every city, town or village, incorporated under the laws of the Territory of Idaho or of the State of Idaho shall have

power and authority to issue municipal coupon bonds in a sufficient amount to acquire, by purchase or otherwise, a waterworks plant for such municipality and a water supply therefor, and to construct, enlarge, extend, repair, alter and improve such plant. The issuance of bonds for the purposes aforesaid or any of such purposes, shall be authorized as provided in Section 2316 of the Revised Codes of Idaho 1909, and acts amendatory thereof, and one or more bond elections may be called in the manner provided by said statute or amendatory acts, in order to submit to the qualified electors who are taxpayers, the question as to whether bonds shall issue in such amount as the City Council, at the time such election is called, shall deem to be necessary for the purposes aforesaid or any of them. All bonds authorized at any municipal election heretofore held as provided in said Section 2316 or acts amendatory thereof, for the purpose of acquiring an adequate water system, by purchase or otherwise, by acquiring additional water and by enlarging, extending, repairing, altering and improving any municipal waterworks plant, shall be deemed to have been authorized for all or any of the purposes for which such bonds may hereafter be issued under this Act, and all such bonds which, at such an election have been heretofore authorized, when issued and sold, are hereby declared to be legal and binding obligations of such municipality, provided all requirements of law have been fully complied with, and the same are hereby declared to be of like force and effect as if the municipality, at the time such election was called and held, had possessed all the powers herein granted and conferred.

Laws 1917, Ch. 16, Sec. 1, p. 44.

SEC. 2316. *Bond Ordinance and Election.* Whenever the common council of such city or the trustees of such town, or other legislative body of any such city or town, shall deem it advisable to issue the coupon bonds of such city or town for any of the purposes aforesaid, the mayor and common council of such city or the trustees of such town shall provide therefor by ordinance, which shall specify the purpose of issuing such proposed bonds; if it is to create a new debt, the object thereof must be stated, or, if it is to fund or refund any existing indebtedness, it must be described; and, when it consists of warrants or other securities, they must be described by giving their number, date and amount and the fund out of which the same, according to the terms thereof, are payable; and the ordinance shall declare the purpose and the total amount for which such

bonds shall be issued and designate the provisions to be made to pay the interest on such bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of the issuance of the same, and shall also provide for the holding of an election of the qualified electors who are taxpayers of such city or town, of which thirty days' notice, to be provided for in such ordinance, shall be given in a newspaper printed and published in such city or town, but if no newspaper be printed and published in the city or town, then in some newspaper having general circulation therein; such newspaper to be designated in said ordinance. Such election shall be conducted as other city elections. The voting at such elections must be by ballot, and the ballot used shall be substantially as follows: "In favor of issuing bonds to the amount of_____Dollars for the purpose stated in Ordinance No._____,", and "Against issuing bonds to the amount of_____Dollars for the purpose stated in Ordinance No._____."

If at such election held as provided for in this chapter, two-thirds of the qualified electors, who are taxpayers in such city or town, voting at such election, assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, such bonds for said purpose shall be issued in the manner hereinafter provided.

Laws 1913, page 299.

Annotator's Note: The above section appears in the chapter dealing with municipal improvement bonds.

Cited: Byrns vs. City of Moscow (1912), 21 Ida., 398; 121 Pac., 1034.

Sufficiency of Ordinance: The provisions of this section which require the bonding ordinance to specify the purpose of issuing the proposed bonds, is not complied with by an ordinance stating the purpose of the bonds to be "to fund the outstanding indebtedness of said city." Coffin vs. Richards (1899), 6 Ida., 741; 59 Pac., 562.

Sufficiency of Notice: Where the mayor publishes a proclamation for a period of more than thirty days in a newspaper published in the city, giving the time and place where the election will be held to vote upon a proposition to issue bonds for municipal improvement, there is a sufficient compliance with this section. Sommercamp vs. Kelly (1902), 8 Ida., 712; 71 Pac., 147. Platt vs. City of Payette (1911), 19 Ida., 470; 114 Pac., 25.

Sufficiency of Ballot: A ballot in the exact language of this section is sufficient. Brown vs. Village of Grangeville (1902), 8 Ida., 784; 71 Pac., 151.

Several Propositions Submitted at One Time: This section does not require a separate election ordinance for each proposed issue of municipal bonds. Different propositions for different objects may be embodied in one ordinance, provided that each proposition is so clearly and distinctly submitted to the electors of the municipality that they may adopt or reject it, independently of the others. Whether several such propositions are submitted in one ordinance or in separate ordinances is immaterial, so

long as the voters are not deceived or misled, or prevented from voting upon each proposition separately. *Platt vs. City of Payette* (1911), 19 Ida., 470; 114 Pac., 25.

Not Applicable to Refunding Bonds: The provisions of this section were not intended to apply to the issuance of refunding bonds of municipalities when the issuance of such bonds would not create an additional indebtedness or liability of the municipality. *Veatch vs. City of Moscow* (1910), 18 Ida., 313; 109 Pac., 722.

Incidental and Auxiliary Matters in Notice of Bond Election: The fact that a village ordinance and notice of election proposing the issuance of municipal coupon bonds state incidental and auxiliary purposes to be accomplished, and for which money must be expended in the construction of a complete water works system, does not render the ordinance or notice of election of an omnibus character, or include more than one purpose within the purview of this section. *Corker vs. Village of Mountainhome* (1911), 20 Ida., 32; 116 Pac., 108.

Purposes to be Separately Specified in Ordinance and Notice: The ordinance and notice of election should separately specify the purposes for which it is proposed to issue bonds. *Ostrander vs. City of Salmon* (1911), 20 Ida., 153; 117 Pac., 692.

Qualification of Electors: A person possessing all the qualifications of an elector, who pays taxes on personal property only, is qualified to vote at municipal bond elections.

Where property upon which taxes are paid is community property, both the husband and wife are entitled to vote if otherwise qualified; but where the property is separate property, only the spouse holding the title thereto is qualified.

Stockholders of a corporation which pays taxes are taxpayers within the meaning of this section.

A widow whose exemption excuses her from the payment of any taxes is not entitled to vote. Attorney General's opinion, 1913-1914, p. 33.

At an election called for the purpose of voting on bonds issued for erecting a municipal electric lighting plant, only qualified electors who are taxpayers of a city or town may vote, and two-thirds of all such qualified electors must vote in favor of the bond issue before the same carries. Attorney General's opinion, 1915-1916, p. 45.

Taxpayer Defined: The word "taxpayer" as used in the statutes concerning municipal bond elections will include a married woman whose husband has property assessed in his name, which property is community property, and the taxes are paid from the community earnings, and that she, if otherwise qualified, is entitled to vote at such election as a taxpayer. Attorney General's opinion, 1911-1912, p. 53.

Qualifications of Electors: If the real property standing in the name of the husband or wife has been acquired after marriage, in other words, if it is community property, husband and wife both would have the right to vote for the reason that the husband pays the taxes on said property, not only for himself but also for his wife, who is in a technical sense of the law a part owner thereof.

Where the husband owns separate property and there is no community property in all probability the wife would not be allowed to vote.

There are but few instances where the wife would not have the right to vote, and the general custom of cities and villages voting municipal bonds is to allow both husband and wife to vote without question. Attorney General's opinion, 1911-1912, p. 67.

SEC. 2330. *Street Improvement Bonds: Election.* Before any such bonds are issued, the mayor and common council of

such city must, by resolution passed at a regular meeting, declare the purpose or purposes for which such bonds are to be issued, and the total amount. They must, also, by ordinance, provide for the holding of a special election of the qualified voters of such city, which shall be conducted as other city elections, at which election there shall be submitted to such electors the question of issuing such bonds for the purpose named in such resolution. The voting at such election must be by ballot, on which ballot must be written or printed: "For bonds and debt (here separately naming the purpose or purposes for which said bonds shall be issued and said debt incurred)." or "Against bonds and debt (here separately naming the purpose or purposes for which such bonds shall be issued and such debt incurred)." If it shall appear upon a canvass of such ballots that two-thirds of such qualified voters voting at such election assent to the issuing of such bonds and the incurring of the indebtedness thereby created for any one or more of the purposes named in such resolution, such bonds for said purpose or purposes shall be issued in the manner in this chapter provided.

CHAPTER XXI.

CONTESTED ELECTIONS, LEGISLATIVE AND STATE OFFICERS.

Section	Section
39. Grounds of contest.	49. Production of papers.
40. Incumbent defined.	50. Witnesses' fees and mileage.
41. Misconduct: When sufficient to vitiate election.	51. Testimony: How taken, certified and preserved.
42. Jurisdiction: Contests over executive offices.	52. Examination of poll books and ballots.
43. Same: Contest over legislative offices.	53. Fees of officers.
44. Notice of contest.	54. Contest papers delivered to presiding officers.
45. Service of notice: Examination of witnesses.	55. Same: Notice of receiving papers.
46. Subpoenas: Application for.	56. Opening and custody of papers.
47. Same: How issued.	57. Preservation of evidence.
48. Disobedience of subpoena: Penalty.	

SEC. 39. *Grounds for Contest.* The election of any person to any legislative or State executive office may be contested:

1. For malconduct, fraud or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or any member of either board, sufficient to change the result;

2. When the incumbent was not eligible to the office at the time of the election;

3. When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights;

4. When the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money, property, or anything of value, for the purpose of procuring his election;

5. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result;

6. For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result;

7. When the incumbent is in default as a collector and custodian of public money or property;

8. For any cause which shows that another person was legally elected.

Laws 1909, page 333.

Election Contests: See the case of *Toncray vs. Budge*, 14 Ida., 621; 95 Pac., 26, for a discussion of election contests.

SEC. 40. *Incumbent Defined.* The term "incumbent" as used in the preceding section means the person whom the canvassers declare elected.

SEC. 41. *Misconduct: When Sufficient to Vitiating Election.* When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election unless the vote of the precinct, township or ward would change the result as to that office.

SEC. 42. *Jurisdiction: Contests Over Executive Offices.* The legislature, in joint meeting, shall hear and determine cases of contested election for all officers of the executive department. The meeting of the two houses to decide upon such elections shall be held in the House of Representatives, and the Speaker of the House shall preside.

Cited: *Hertle vs. Ball* (1903), 9 Ida., 193; 72 Pac., 953.

Primary Election: It is clear that there is no such thing as a contest provided for by the primary election law for the office of Governor, because contests for Governor take place before the legislature meets.

Lansdon vs. S. Bd. of Canvassers (1910), 18 Ida., 596, 605; 111 Pac., 133.

SEC. 43. *Same: Contest Over Legislative Offices.* The Senate and House of Representatives shall severally hear and determine contests of the election of their respective members.

Cross Reference: Each house of the Legislature is the judge of the election, qualifications and returns of its members. Const., Art. III, Sec. 9.

Cited: Hartle vs. Ball (1903), 9 Ida., 193; 72 Pac., 953.

SEC. 44. *Notice of Contest.* Whenever any elector of this State chooses to contest the validity of the election of any of the officers of the executive department of the State, or whenever any elector of the proper county or district chooses to contest the election of any member of the legislature from such county or district, such person shall give notice thereof, in writing, and leave a copy thereof with the person whose election he intends to contest, within twenty days after the election (if the person cannot be found in his district, then a copy to be left at his last place of residence in the district), naming the points on which the election shall be contested, and the name of some person authorized by law to administer oaths, selected by him to take the depositions, and the time and place for the taking of the same; the adverse party may also select one such person on his part to attend at the time and place of taking such depositions.

SEC. 45. *Service of Notice: Examination of Witnesses.* The notice provided for in the preceding section shall be served at least ten days before the day fixed for the taking of depositions. The said two persons selected as aforesaid to take the depositions shall proceed jointly, or in default of either one of such persons to attend at the time and place fixed upon, the one attending shall proceed to hear and reduce to writing the testimony of all witnesses who may be produced by either of said parties, and may adjourn from day to day until all said testimony shall have been taken and reduced to writing: *Provided*, That such testimony shall be finally closed on or before the 29th of December following.

SEC. 46. *Subpoenaes: Application For.* When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpoena to any District Judge of the State, or to the probate judge, or any justice of the peace, notary public, mayor, recorder, or other civil officer authorized to administer oaths within the county where the witness resides or may be found.

SEC. 47. *Same: How Issued.* The officer to whom the application authorized by the preceding section is made, must thereupon issue his writ of subpoena, directed to all such witnesses as are named to him, requiring their attendance before the officer named in the notice, at some time and place named in the subpoena, in order to be examined respecting the contested election.

SEC. 48. *Disobedience of Subpoena: Penalty.* Any person who, having been summoned in the manner above directed, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, forfeits the sum of twenty dollars, to be recovered, with costs of suit, by the party at whose instance the subpoena was issued, and for his use, and is guilty of a misdemeanor.

SEC. 49. *Production of Papers.* The officers have power to require the production of papers; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce and deliver up certified or sworn copies of the same in case they be official papers, such person is guilty of a misdemeanor.

SEC. 50. *Witnesses' Fees and Mileage.* Every witness attending by virtue of any subpoena herein directed to be issued is entitled to receive the sum of two dollars for each day's attendance, and the further sum of twenty-five cents for every mile necessarily traveled in going and returning. Such allowance must be ascertained and certified by the officer taking the examination, and paid by the party at whose instance such witness was summoned.

SEC. 51. *Testimony: How Taken, Certified and Preserved.* No testimony shall be received by the person officiating at the taking of the depositions on the part of the contestant which does not relate to the points specified in the notice, a copy of which notice shall be delivered to the person or persons so officiating, and said testimony, together with a copy of the notice, when taken, shall be certified by the person or persons before whom the same is taken, enveloped, sealed up, indorsed "Deposition taken in the matter of the contest of the election of A. B. to the office of-----," and directed to the Secretary of State, who shall preserve the same, unopened, till the meeting of the legislature.

SEC. 52. *Examination of Poll Books and Ballots.* If, at the time of taking depositions to be used before the legislature, or either branch thereof, in the case of a contested election, the notice shall allege that it is necessary for the determination of such contest that the ballots or the poll books of any election district or districts should be inspected, the officer or officers before whom such depositions shall be taken shall, on the request of either party to the contest, issue an order requiring the county auditor or other person in whose custody or possession the ballots or poll books may be, naming the district or districts mentioned in the notice, to deliver them to the person or persons therein named, who shall deliver them to the person or persons issuing such order. Such officer or officers shall transmit such ballots or poll books, unopened, in the same envelope with the depositions, as provided in the preceding section.

SEC. 53. *Fees of Officers.* Officers performing services, in a contested election case, may charge and collect from the party at whose instance such services were performed, the same fees as are allowed for similar services in civil cases.

SEC. 54. *Contest Papers Delivered to Presiding Officer.* On the second day of the organization of the legislature, the Secretary of State shall deliver to the Speaker of the House all papers relating to the contested elections of executive officers, and to the presiding officers of each house, all papers relating to contested elections of the members of their respective houses.

SEC. 55. *Same: Notice of Receiving Papers.* Upon the reception, by such presiding officers, of papers relating to contested elections, they shall immediately give notice to their respective houses that such papers are in their possession. Where the papers relate to the contest of a State executive officer, the House of Representatives shall notify the Senate, and a day shall be fixed by both houses, by concurrent resolution, for the uniting of the two houses to decide upon the same, in which decision the yeas and nays shall be taken and entered upon the journal.

SEC. 56. *Opening and Custody of Papers.* The papers relating to any such contest shall be opened only in the presence of the body by the presiding officer, to whom the same shall be delivered. If ballots or poll books are contained therein, they

shall, after being opened, remain in the custody of such presiding officer, subject to the inspection of the members, unless they shall by vote be temporarily committed to the chairman of a committee, in which case such chairman shall return them to the proper presiding officer; and they shall, upon the decision of the contest, be again sealed up in an envelope, and returned by mail or otherwise to the office of the county auditor in which they were first required to be filed.

SEC. 57. *Preservation of Evidence.* All the evidence in any contest provided for in the last preceding section, except ballots or poll books, shall, after a decision thereof, be preserved in the office of the Secretary of State.

CHAPTER XXII.

HOLIDAYS.

SEC. 10. Holidays, within the meaning of these Revised Codes, are: Every Sunday, the First Day of January, the Twenty-second Day of February, the Thirtieth day of May (known as Decoration Day), the Fourth of July, the first Monday of September (known as Labor Day), the Twenty-fifth Day of December, the Twelfth Day of October (known as Columbus Day), the Fifteenth Day of June (known as Idaho Pioneer Day), every day on which an election is held throughout the State, and every day appointed by the President of the United States or by the Governor of the State, for a public fast, thanksgiving or holiday.

Laws 1911, page 482. Formerly Laws 1911, page 344; Laws 1909, page 27.

CHAPTER XXIII.

COMMISSION FORM OF GOVERNMENT.

Section

1. What cities may adopt.
2. Petition: Election: Officers:
Term: Vacancies.
- 2a. Vacancies: How filled.
- 2b. Registration: Election officers.
3. General laws applicable: Charters void.
4. Elections.
- 4a. Same: Nomination.
- 4b. Same.
- 4c. Same: Petition of nomination.
- 4d. Same: Clerk to furnish certi-

Section

- 4e. Same: Certificate: Who may
sign.
- 4f. Same: When certificates to be
filed.
- 4g. Same: Duties of clerk.
- 4h. Same: Withdrawal of name.
- 4i. Same: Withdrawal of candi-
date.
- 4j. Same: Petition to be filed.
- 4k. Same: Petitions to be pre-
served.

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| 4l. Same: Acceptance of nomination. | 29. Passage of ordinance by people. |
| 4m. Same: Publication of notice. | 30. Inconsistent ordinances. |
| 4n. Same: Ballots. | 31. Repeal or amendment by same method. |
| 4o. Same: Preparation of ballots. | 32. More than one ordinance may be proposed. |
| 4p. Same: Second election. | 33. Council may prescribe rules. |
| 4q. Same: Names of candidates. | 34. Recall. |
| 4r. Same: Form of ballot. | 35. Same: Procedure. |
| 4s. Same: Continued. | 36. Same: Petition. |
| 4t. Same: Continued. | 37. Same: Duty of Clerk. |
| 4u. Same: Sample ballots. | 38. Same: Objections by officer. |
| 4v. Same: Who elected. | 39. Same: Presentation to council. |
| 4w. Same: Second election. | 40. Insufficient petition. |
| 4x. Same: When held. | 41. Election. |
| 4y. Same: General provisions govern. | 42. Same. |
| 4z. Same: Registration. | 43. Same: 200 words for both parties in election call. |
| 5. Failure to qualify: Vacancy. | 44. Incumbent a candidate. |
| 6. Informalities. | 45. General laws apply. |
| 7. General laws apply: City council canvassing board. | 46. Incumbent defeated: Effect. |
| 8. Bribery: Carriages unlawful: Penalty. | 47. Disqualification of officer recalled. |
| 9. Crimes: Penalties. | 48. More than one officer may be recalled. |
| 23. Initiative and referendum. | 49. Vacancy. |
| 24. Initiative: Method of exercise. | 50. Council may prescribe rules. |
| 25. Referendum. | 75. Abandonment of commission form: Procedure. |
| 26. Same: Council may submit. | 76. Petitions in general. |
| 27. Ballots. | |
| 28. Publication of ordinances. | |

SEC. 1. *What Cities May Adopt.* That any city within the State of Idaho, organized under the general laws of the State, or under special charter, or under a general incorporating Act, now or hereafter having, as shown by the last preceding State or National census, a population of two thousand five hundred persons, or over that number, may become organized as a city under the provisions of this Act by proceedings as hereinafter provided.

Laws 1911, page 281.

Cited: Kessler vs. Fritchman (1911), 21 Ida., 30; 119 Pac., 692. Swain vs. Fritchman, 21 Ida., 783.

Charter Cities: Under the provisions of this section it is specifically provided that any city within the state organized under a special charter may adopt the provisions of the commission form of government act.

Swain vs. Fritchman (1912), 21 Ida., 783.

Not Special Legislation: This act is not special or class legislation and is not in violation of Sec. 19, Art. 3 of the Constitution, but by its provisions classifies the cities of the State as clearly authorized under the provisions of Sec. 1, Art. 12 of the Constitution. Kessler vs. Fritchman (1911), 21 Ida., 30; 119 Pac., 692.

Classification According to Population: By this section the legislature intended to provide a system of government which might be adopted for every municipality, whether it had been organized as a city or village, and

fixed such classification according to population as provided by the Constitution at the number of 2500. *Ib.*

Suspends Section 7459: The adoption by a city of the provisions of the Black Law has the effect of suspending the operation of Sec. 7459 as to all officers of such city. *Hodges vs. Tucker* (1914), 25 *Ida.*, 563; 138 *Pac.*, 1139.

Exclusive Method of Removal: This law, when considered as a whole, indicates that the legislature, in enacting the same, intended to provide a system complete within itself so far as the provisions of the act provide, and where it provides a method or means for doing an act, such as the removal of an officer elected under its provisions, it must and was intended to be exclusive of any other remedy provided prior to its enactment. *Hodges vs. Tucker* (1914), 25 *Ida.*, 563; 138 *Pac.*, 1139.

Liabilities: If city officials neglect to keep the streets and alleys in proper repair and injury results from such negligence, the city is liable for the damages, and the officer who neglects his duty in making proper inspection of the street and sidewalks by reason whereof personal injury results is liable to the city. *Powers vs. Boise* (1912), 22 *Ida.*, 286, 293-4; 125 *Pac.*, 194.

To What Cities Applicable: Under this section there are only two kinds of cities that can become incorporated under the commission government act. The first is a city of the second class as the same had been previously known under the general laws of the state (Sec. 2170), and the second was a city operating under a special charter, and each of these cities was subject to the condition that they should have a population of at least 2,500. *Swain vs. Fritchman* (1912), 21 *Ida.*, 783.

Applies to Villages: A village organized under the general laws of the state is not required to pass through the process of becoming a city of the second class under the general laws of the state before it can petition for an election to form an organization under this act. *Kessler vs. Fritchman* (1911), 21 *Ida.*, 30; 119 *Pac.*, 692.

SEC. 2. *Petition: Election: Officers: Term: Vacancies.*
Upon petition of electors equal in number to twenty-five (25) per centum of the votes cast for all candidates for mayor at the last preceding general city election of any such city, the mayor shall, by proclamation, issued within ten (10) days after filing of such petitions, submit the question of organizing as a city under this Act at a special election to be held at a time specified therein, and within sixty (60) days after said petition is filed. If such plan is not adopted at the special election so called, the question of adopting said plan shall not be resubmitted to the voters of said city for adoption within two (2) years thereafter, and then the question to adopt may be re-submitted upon the presentation of a new petition signed by the electors of such city equal in number to twenty-five (25) per centum of the votes cast for all candidates for mayor at the last preceding general city election.

At such election the proposition to be submitted to the electors shall be, "Shall the proposition to organize the city of (name of city) under the laws of the Eleventh Session of the

Legislature of Idaho, approved-----, 1911, recorded at page-----of the Session Laws of said Eleventh Session, be adopted?" and an election thereupon shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other city elections. If the majority of the votes cast shall be in favor thereof, the city shall thereupon proceed to the election of five (5) councilmen, one of whom shall be known, designated and elected as the mayor, as hereinafter provided. Immediately after such proposition is adopted, the mayor shall transmit to the Governor, the Secretary of State, and to the county auditor of the county in which such city is located each a certificate, stating that such proposition was adopted, and giving the date of the election at which it was adopted. At the regular city election after the adoption of such proposition, there shall be elected five (5) councilmen, one of whom shall be known, designated and elected as mayor, which five (5) persons shall be known as the council. The first mayor elected after the adoption of this Act shall hold office until the next general election, or until his successor shall be elected and qualified; thereafter a mayor shall be elected every two (2) years and shall hold office until his successor shall be elected and qualified, except as hereinafter provided; the councilmen first elected after the adoption of the provisions of this Act, upon their qualifications, shall be divided into two (2) classes of two (2) members each, the first class to serve for a term of two (2) years each, and the second class to serve for a term of four (4) years each, which division and determination shall be made by lot under the supervision of the mayor. The two (2) councilmen who are to serve the first two (2) years after the adoption of this Act shall serve only until the next general election. The two (2) who are by such determination to hold office for four (4) years shall hold office until the second general election, and until their successors are elected and qualified. And at each general municipal election thereafter there shall be elected two (2) members of the council on such general ticket for terms of four (4) years each.

In case of vacancy among the hold-over members temporarily filled by appointment of the council as herein prescribed, such vacancy shall be filled in the next ensuing general election for the remainder of the term, in the same manner as herein prescribed for the nomination and election of other councilmen.

Laws 1911, page 281.

Cited: Kessler vs. Fritchman, 21 Ida., 30; 119 Pac., 692. Swain vs. Fritchman, 21 Ida., 783. Hodges vs. Tucker, 25 Ida., 563; 138 Pac., 1139.

Exception Absolute: This is an absolute exception and makes the method of removal stated in the Black law exclusive. Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 2 (a). *Vacancies: How Filled.* If a vacancy shall occur in the office of mayor or councilman, the council shall appoint a qualified person to fill such vacancy. If at any second municipal election, when such second municipal election is necessary, held under the provisions of this Act, the mayor or other member of the council be not elected by reason of a tie vote among any of the candidates therefor, then the council after the qualifications of the persons, if any, elected thereto at such election, shall appoint one of the persons receiving such tie vote to fill such office as in the case of a vacancy therein. In each case the person so appointed shall hold office, subject to the provisions of the recall under the next general municipal election.

In the event, however, that the next regular city election does not occur within one (1) year after such special election on said question, the mayor, in case said proposition carries, shall, within ten (10) days after said election, by proclamation, call a special election for the election of five (5) city councilmen, one (1) of whom shall be designated and elected as mayor, for such city, sixty (60) days' notice thereof, by publication in the official newspaper of such city being given in such call; such election in either case to be conducted as herein provided.

Laws 1911, page 283.

Cited: Hodges vs. Tucker, 25 Ida., 563; 138 Pac., 1139.

SEC. 2 (b). *Registration: Election Officers.* For the purpose of the election for the adoption or rejection of the proposition to become organized as a city under this Act, and for the election provided herein to be called by the mayor's proclamation, for the purpose of electing the first council, in case the proposition carries, it shall not be necessary for any qualified elector of such city, who was duly registered for the last preceding general municipal election held therein, to register for either of said above named elections; the registration books, lists, oaths and all other registration supplies used for such last preceding general municipal election shall be used for both said elections; the same registrars who acted at the last preceding

general election shall act, but in case of vacancy from any cause in the office of any registrar, the council shall fill such vacancies; *Provided*, Any qualified elector who was not registered for said last preceding general municipal election may register for said elections above named by applying to the registrar of his ward or precinct within the time the registration books are open for that purpose. The council shall, prior to the said election at which the proposition to become organized under this Act is submitted to be voted upon, appoint all election officers provided for by the general election laws pertaining to such cities, and said election officers shall act at the said election held to elect the first council, if a special election is called for that purpose; *Provided*, That the council may fill any vacancies that may occur in any of said offices; *Provided, further*: That, if, from any cause, any of the election officers in any ward or precinct should fail to be present at the polling place at the time of opening of the polls, then such vacancy may be filled by the electors present.

Laws 1911, page 283.

Cross Reference: See Sec. 2249, Laws 1913, page 426. City clerk is registrar.

SEC. 3. *General Laws Applicable: Charters Void.* All general laws of the State of Idaho governing or pertaining to such cities and not inconsistent with the provisions of this Act, shall apply to and govern cities organized under this Act; *Provided*, That no provisions of any special charter or other special Act or law which any such city may be operating under at the time of its becoming organized under this Act, shall thereafter be applicable to such city while it is operating under the provisions of this Act. All by-laws, ordinances and resolutions lawfully passed and in force in any such city under its former organization shall remain in full force until altered or repealed by the council elected under the provisions of this Act. The territorial limits of such city shall remain the same as under its former organization, but such territorial limits may be extended or changed as provided by law, and all rights and property of every description which are vested in any such city under its former organization shall vest in the same under the organization herein contemplated, and no right or liability, either in favor of or against it, existing at the time, and no suit or prosecution of any kind shall be affected by such change, and such city shall be the successor of the former organization and shall have perpetual succession; it shall have and exercise

all powers, functions, rights and privileges, now or hereafter given or granted it, and shall be subject to all the duties, obligations, liabilities and limitations now or hereafter imposed upon such municipal corporations by the Constitution and laws of the State of Idaho, and shall have and exercise all other powers, functions, rights and privileges usually exercised by, or which are incidental to, or in herein, such municipal incorporations of like character and degree.

Laws 1911, page 284.

Application of Act: Under the provisions of this section whenever a change of form of government is made from that under a special charter or from an organization under the general laws to the new form of government provided by said act, the provisions of the act are made to apply alike to all such cities making such change, under the classification made by the act.

Kessler vs. Fritchman (1911), 21 Ida., 30; 119 Pac., 692.

General Laws Govern: Under this section a special charter city, which has decided by popular vote, in accordance with the provisions of the act, to adopt the commission form of government, is thereafter subject to, and governed by all the general laws of the state governing or pertaining to cities of the second class which are not inconsistent with the provisions of the commission form of government act.

Swain vs. Fritchman (1912), 21 Ida., 783.

Definition of Terms: The words "such cities" as used in this section mean cities of the class to which the one adopting the new form of government belongs, if existing under the general laws, or would legally belong if it were organized and operating under the general laws of the State.

Swain vs. Fritchman (1912), 21 Ida., 783.

Cities of the First Class: See Laws of 1913, page 312.

SEC. 4. *Elections.* All such cities which shall have adopted this Act and become organized thereunder shall elect the officers provided herein to hold office until the next general municipal election, to be held as hereinafter provided. A general municipal election shall be held in such city organized under this Act, on the first Tuesday in April, 1913, and on the first Tuesday in April in every second year thereafter, and shall be known as a general municipal election. A second election shall be held, when necessary, as provided in Section 4 (w) of this Act, on the third Tuesday after said general municipal election, and shall be known as the second general municipal election.

All other municipal elections that may be held by authority of this Act, or of general law, shall be known as special municipal elections.

Laws 1911, page 285.

SEC. 4 (a). *Same: Nominations.* The mode of nomination and election of all elective officers of the city to be voted for at any municipal election shall be as follows and not otherwise:

Laws 1911, page 285.

SEC. 4 (b). *Same.* The name of a candidate shall be printed upon the ballot when a petition for nomination shall have been filed in his behalf, in the manner and form and under the conditions hereinafter set forth.

Laws 1911, page 285.

SEC. 4 (c). The petition of nomination shall consist of not less than twenty-five (25) individuals' certificates, which shall read substantially as follows:

PETITION OF NOMINATION.

INDIVIDUAL CERTIFICATE.

State of Idaho,
County of _____ } ss.
City of _____

Precinct or ward No. _____

I, the undersigned, certify that I do hereby join in a petition for the nomination of _____, whose residence is at No. _____ Street _____ (city), for the office of _____, to be voted for at the municipal election to be held in the city of _____ on the _____ day of _____, 19____, and I further certify that I am a qualified elector and am not at this time the signer of any other petition nominating any other candidate for the above named office, or in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No. _____ Street _____ (city), and that my occupation is _____ (Signed) _____

State of Idaho,
County of _____ } ss.
City of _____

_____, being first duly sworn, deposes and says that he is the person who signed the foregoing cer-

tificate and that the statements therein are true and correct.

(Signed)-----

Subscribed and sworn to before me this-----day of
-----, 19-----.

Notary Public.

The petition of nomination of which this certificate forms a part, if found insufficient, shall be returned to-----, at-----Street, -----(city), Idaho.

Laws 1911, page 285.

SEC. 4 (d). *Same: Clerk to Furnish Certificates.* It shall be the duty of the City Clerk to furnish, upon application, a reasonable number of regular printed forms of individual certificates of the above character, also to furnish forms of acceptance, or rejection of nomination to any person or persons applying therefor.

Laws 1911, page 286.

SEC. 4 (e). *Same: Certificate: Who May Sign.* Each certificate must be a separate paper. All certificates must be of a uniform size, the size to be determined by the city clerk. Each certificate must contain the name of one (1) signer thereto and no more. Each signer must be a qualified elector, must not at the time of signing the certificate have his name signed to any other certificate for any other candidate for the same office, nor, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two (2) or more conflicting certificates, all his certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true before a Notary Public, as provided for in this section. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

Laws 1911, page 286.

SEC. 4 (f). *Same: When Certificates to Be Filed.* The petition of nominations, consisting of not less than twenty-five (25) such individual certificates for any one (1) candidate may be presented to the city clerk not earlier than forty-five (45) days, nor later than thirty (30) days, before the said

first election. The clerk shall endorse thereon the date upon which the petition was presented to him.

Laws 1911, page 286.

SEC. 4 (g). *Same: Duties of Clerk.* When the petition of nomination is presented for filing to the city clerk, he shall forthwith examine the same and ascertain whether it conforms to the provisions of this section. If found not to conform thereto, he shall then and there, in writing, designate on said petition the defect or omission or reason why such petition cannot be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk if within the time allowed for filing such petition, as in the first instance. The clerk shall forthwith proceed to examine the amended petition as hereinbefore provided for the original petition. The petition may be amended any number of times, provided that the last amended petition is on file within the time before the election herein prescribed for the filing of original petitions. If necessary, the council shall provide extra help to enable the city clerk to perform satisfactorily, and in due time and promptly, the duties imposed by this section.

Laws 1911, page 286.

SEC. 4 (h). *Same: Withdrawal of Name.* Any signer to the petition for nomination and certificate may withdraw his name from the same by filing with the city clerk a verified revocation of his signature before the filing of the petition with the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

Laws 1911, page 287.

SEC. 4 (i). *Same: Withdrawal of Candidate.* Any person whose name has been presented under this section as a candidate may, not later than thirty (30) days before the date of election, cause his name to be withdrawn from nomination by filing with the city clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number so to be elected, then other nominations may be made by filing petitions therefor not later than twenty (20) days prior to such election.

Laws 1911, page 287.

SEC. 4 (j). *Same: Petition to be Filed.* If either the original or the amended petition of nomination be found sufficiently signed, as hereinbefore provided, the clerk shall file the same twenty-five (25) days before the date of election. When a petition of nomination shall have been filed by the clerk, it shall not be withdrawn nor added to, and no certificate shall be revoked thereafter.

Laws 1911, page 287.

SEC. 4 (k). *Same: Petitions to Be Preserved.* The city clerk shall preserve in his office for a period of two (2) years all petitions of nomination and all certificates belonging thereto filed under this section.

Laws 1911, page 287.

SEC. 4 (l). *Same: Acceptance of Nomination.* Any person nominated under this Act shall file his acceptance with the clerk not later than twenty-five (25) days before the day of election; and in the absence of such acceptance, the name of the candidate shall not appear on the ballot. Such acceptance shall be substantially in the following form:

State of Idaho, }
County of _____ } ss.
City of _____ }

I, _____, having heretofore been nominated for the office of _____, of the city of _____, do hereby accept said nomination. I hereby declare that I am not a candidate as the nominee or representative of, or because of any promised support from, any political party, or any committee or convention representing or acting for any political party or organization.

(Signed) _____
(Candidate).

Subscribed and sworn to before me this _____ day of _____, A. D. 19____.

Notary Public in and for
_____ (County).

Laws 1911, page 287.

SEC. 4 (m). *Same: Publication of Notice.* Immediately after such petitions are filed, the clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall, not later than twenty (20) days before the said first election,

certify such list as being the list of candidates nominated as required by this Act, and the City Council shall cause said certified list of names and the offices to be filled to be published in the proclamation calling for the election, the first publication of the proclamation which includes the said list to be at least ten (10) days before the said first election in not more than two (2) daily papers of general circulation published in such city, and if no daily papers are published in the city, then in some other newspaper published in the city. Said proclamation shall conform in all respects to the general State law governing the conduct of municipal elections now or hereinafter in force except as above required.

Laws 1911, page 288.

SEC. 4 (n). *Same: Ballots.* The city clerk shall cause the ballots to be printed and bound and numbered as provided for by general law, except as otherwise required in this Act. The ballots shall be uniform in size; no exact size is prescribed for the ballots, but they shall be of sufficient size to contain the list of names and the respective offices as published in the proclamation, and shall have printed thereon substantially the following:

OFFICIAL BALLOT
GENERAL (OR SPECIAL) MUNICIPAL ELECTION,
CITY OF _____
(Inserting date thereof.)

Instructions to voters: To vote, stamp or write a cross (X) in the square opposite the name of the candidate for whom you desire to vote. To vote on any ordinance or other question submitted place a cross (X) in the square to the right of such ordinance, or other question, in the one marked (yes) or (no) according to the way you desire to vote on it. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you, by mistake or accident, mark, tear or deface or otherwise mutilate this ballot, return to the election judges and obtain another ballot.

Laws 1911, page 288.

SEC. 4 (o). *Same: Preparation of Ballots.* All ballots shall be precisely of the same size, quality, tint of paper, kind of type and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type

of the same size and style. The form shall be set up with the names of candidates in the order in which they appear upon the form of official ballot prepared by the city clerk; in printing each set of official ballots for the various election precincts or wards, the position of the names shall be changed in each office division as many times as there are candidates in the office division or group in which there are the most names; as nearly as possible, an equal number of ballots shall be printed after each change. In making the changes of position, the printer shall take the line of type at the top of each office division and place it at the bottom of that division, shoving up the column so that the name that was second before shall be first after the change. After the ballots are printed, before being cut, they shall be kept in separate piles for each change of position and shall then be piled, taking one from each pile and placing it upon the pile to be cut, the intention being that every other ballot in the pile of printed sheets shall have the names in different position. After the piles are made in this manner, they shall be cut and placed in blocks of one hundred (100) ballots in each block, every other ballot in such blocks to have the names in different position, as nearly as practicable. Nothing shall be placed on any ballot which shall be indicative of the source of the candidacy or of the support of any candidate, or of the principles or platform of any candidate, and no emblem of any kind indicative of any party organization shall be placed upon any such ballot. In addition thereto, the ballot shall, in the discretion of the city clerk, be of sufficient size to permit a column on the right hand side of the ballot on which all other questions, ordinances and measures to be voted upon at the municipal elections, as provided for under this Act, may be placed. The size of the ballot and the space to be left for such column shall be determined by the city clerk after ascertaining the number of other questions to be voted upon at any municipal election; *Provided, however*, That if, in the opinion of the city clerk, the placing of such other questions, ordinances and measures, as are to be submitted, on the same ballot with the names of the candidates to be voted for for the various offices, would make such ballot cumbersome, or, in his opinion, too large, then such clerk shall have printed separate ballots for such other questions, ordinances and measures, which ballots shall be uniform in size and color and of sufficient size to contain all such questions, ordinances and measures submitted at the same election; *Provided, fur-*

ther, That, if any of the questions, ordinances or measures are printed on separate ballots, then all must be printed on such separate ballot and all on one form of ballot, which separate ballot shall, when used, be of a different tint from the ballots which contain the names of the candidates to be elected; *Provided, further*, That any proper ordinance or question which was not printed on the ballots, used at said first election, and which, complying with the provisions of this Act, may properly be submitted at the time of said election provided for herein, may be submitted and voted upon at the second election; *And provided, further*, That no such election shall be held for the sole and only purpose of voting on proposed ordinances, or other questions, and in cases where no second election is required to be held for the purpose of electing officers, the proposed ordinances and other questions must be submitted at an election called for that purpose in the manner as provided in this Act.

Laws 1911, page 289.

SEC. 4 (p). *Same: Second Election.* All ballots used for second election, when such second election, according to the provisions of this Act, is necessary, shall fully comply with the requirements of the ballots for the first election, as set forth above, for all candidates for all offices who were not elected by such majority vote at said first election; *Provided*, That no question or ordinance submitted and voted upon at said first election shall be resubmitted and voted upon at said election should the same be placed upon the ballots for said election, provided for herein.

Laws 1911, page 290.

SEC. 4 (q). *Same: Names of Candidates.* The name of no candidate who has been duly and regularly nominated and has not withdrawn his name as hereinafter provided shall be omitted from the ballot, and all names shall be on one form of ballot.

Laws 1911, page 290.

SEC. 4 (r). *Same: Form of Ballot.* The form of ballot to be used for such first and second elections provided by this Act shall be substantially as follows:

OFFICIAL (FIRST OR SECOND ELECTION) BALLOT. CANDIDATES FOR NOMINATION (OR ELECTION) FOR MAYOR AND COUNCILMEN OF-----
(city) AT THE (FIRST OR SECOND) ELECTION.

Election to be held-----, 19----

For Mayor

(vote for one)

(Names of candidates)

For Councilmen

(vote for (here insert number))

(Names of candidates)

Official Ballot attest

(signature)

City Clerk.

Laws 1911, page 291.

SEC. 4 (s). *Same: Continued.* A half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross (X). Two (2) such squares shall also be placed to the right of any ordinance or question to be voted on, whether they are printed on the same ballot with the names of candidates or printed on separate ballots, and in the upper square shall be printed the word "no," and if the voter is in favor of the ordinance or question, he shall place his cross in the square containing the word "yes," and, if opposed, he shall place his cross in the square containing the word "no," but it shall not be compulsory to vote on any ordinance or question submitted. Above each ordinance (or measure) there shall be placed on the ballot the following words: "Shall the following ordinance (or measure) be adopted?"

Laws 1911, page 291.

SEC. 4 (t). *Same: Continued.* Half-inch spaces shall be left below the printed names of candidates for each office equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

Laws 1911, page 291.

SEC. 4 (u). *Same: Sample Ballots.* The clerk shall cause to be printed sample ballots for both first and second elections where a second election is to be held, and sample ballots con-

taining all ordinances and measures to be submitted, which sample ballots shall be in the same form as the official ballots to be used, except they shall have printed thereon the words "sample ballots" and shall be printed on a different colored paper from the official ballot and shall not be numbered; and the clerk shall furnish copies of the same, on application at his office, to anyone applying therefor, at least five (5) days before the election.

Laws 1911, page 291.

SEC. 4 (v). *Same: Who Elected.* In case there is but one person to be elected to an office as mayor, the candidate receiving a majority of the votes for all the candidates at the said first election for that office shall be declared elected; in case there are two or more persons to be elected to an office, as that of councilmen, then those individual candidates, if any, equal in number to the number to be elected, who receive the number of votes greater than one-half ($\frac{1}{2}$) the number of ballots cast at such election, shall be declared elected; *Provided, however,* That no person shall be declared elected to any office at such first election unless the number of votes received by him shall be greater than one-half ($\frac{1}{2}$) the number of ballots cast at such election for such office.

Laws 1911, page 292.

SEC. 4 (w). *Same: Second Election.* If at any election held as above provided there be any office to which the required number of persons were not elected, as above provided, then as to such office the said first election shall be construed to have been a primary election for the nomination of candidates, and the second election shall be held to fill such office or offices. The candidates not elected at such first election, equal in number to twice the number to be elected to any given office, which was not so filled by the said first election, or less, if so there be, who receive the highest number of votes for the respective offices at such first election, shall be the only candidates at such second election; *Provided, That,* if there be any person, who, under the provisions of this subdivision, would have been entitled to become a candidate for any office, except for the fact that some other candidate received an equal or tie number of votes therefor, then all such persons receiving an equal or tie number of votes shall likewise become candidates for such office at such second election, and their names shall be also placed on the ballot for such second election.

The candidates, equal in number to the persons to be elected at such second election, who shall receive the highest number of votes at such second election, shall be declared elected to such office.

Laws 1911, page 292.

SEC. 4 (x). *Same: When Held.* The said second election, if necessary to be held, shall be held on the third Tuesday after the first election.

Laws 1911, page 292.

SEC. 4 (y). *Same: General Provisions Govern.* All the provisions and conditions above set forth as to the calling, holding, and conducting of elections, so far as they may be applicable, shall govern the second election, except that notice of election and the list of candidates and offices to be filled need be published twice only. *And provided, also,* That the same precincts, or wards, and polling places, the same officers of election, the same registrar and registration books and lists and check and tally books shall, if possible, be used.

Laws 1911, page 292.

SEC. 4 (z). *Same: Registration.* The registration books shall close on the Saturday night preceding the said first election, at 9 o'clock p. m., and shall remain closed, and no person be allowed to register until on Wednesday following said first election; if a second election is to be held, then any qualified elector who was not properly registered for said first election may apply to the registrar and register for the said second election at any time during business hours and while said books are open, as required by law, until the Saturday night at 9 o'clock preceding said second election, when said registration books are closed, and no person shall be permitted to register for said second election after said registration books are closed. Any elector who is not registered as required shall not be entitled to vote at either said first or said second election. After closing said registration books, the registrar shall prepare his registration books alphabetically, and his appointment, duties and compensation shall be the same as provided by general law, except as herein otherwise provided. No qualified elector who is duly registered as a voter at the last preceding general municipal election next preceding the adoption by the city of the provisions of this Act, shall be required to re-register for the election at which is submitted the proposition of adopting the provisions of this Act, or for any election held in such city

after the adoption of the general provisions of this Act, so long as he remains or has remained continuously after such registration a duly qualified elector of such city; *Provided*, That if, after any qualified elector has registered for the said last preceding general municipal election prior to the adoption of this Act, or after registering for an election for the adoption of or after the adoption of this Act, he has failed to keep his continuous residence and full qualifications to vote in such city, regardless of how short the term of disqualification shall exist or have existed, he shall not be entitled to vote at any election after such disqualification existed unless he shall have re-registered for the election at which he next desires to vote.

Laws 1911, page 293.

SEC. 5. *Failure to Qualify: Vacancy.* If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office as hereinafter provided.

Laws 1911, page 293.

SEC. 6. *Informalities.* Any informalities in conducting municipal elections shall not invalidate the same if they have been conducted fairly and without fraud and in substantial conformity to the requirements of this Act.

Laws 1911, page 294.

SEC. 7. *General Laws Apply: City Council Canvassing Board.* The provisions of the State law relating to the qualifications of electors, appointment, qualification, duties and compensation of registrars, and the registration of voters, the manner of voting, the duties of election officers, the canvassing of returns and all other particulars in respect to the calling, holding, management and conduct of elections, so far as they may be applicable, and not herein otherwise specially provided for, shall govern all municipal elections, provided that the city council shall meet as a canvassing board and duly canvass and certify the election returns within four (4) days after any municipal election.

Laws 1911, page 294.

SEC. 8. *Bribery: Carriages Unlawful: Penalty.* No person shall, in order to aid or promote his own nomination or election to any office under the provisions of this Act, directly or indirectly, either himself or through any other person, give, pay, expend or contribute, promise to give, pay, expend or contribute any money or other valuable thing or service except

for the printing and distribution of circulars, cards, pamphlets, newspaper articles and other publications whereby he states his position or views upon public questions or any matters relating to the affairs of such municipality, for the necessary expenses in hiring or renting halls for the purpose of holding public meetings to address the voters and others upon such questions and matters relating to his candidacy, and for stationery and postage.

No person shall agree to perform any services in the interest of any candidate for any such office provided for in this Act in consideration of any money or other valuable thing for such services performed in the interest of any such candidate.

It shall be unlawful for any person to use any carriage, automobile or vehicle of any kind or description for the transportation of voters to or from the places of registration during the period provided for registration, or to or from the polling places on the day of any municipal election held in cities organized under this Act; *Provided*, This shall not prohibit any person or member of his family from going to or from such named places in his own conveyance, or from using his own conveyance to transport crippled, aged, infirm or sick persons to or from said places.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof before any court having jurisdiction, be punished by a fine not exceeding Five Hundred Dollars (\$500), or be imprisoned in the county jail not exceeding ninety (90) days, or by both such fine and imprisonment.

Laws 1911, page 294.

SEC. 9. *Crimes: Penalties.* Any person offering to give a bribe, either in money or other consideration, to any elector for the purpose of influencing his vote at any election provided in this Act, or any elector entitled to vote at any such election receiving and accepting such bribe or other consideration; any person making false answers to any of the provisions of this Act relative to his qualifications to vote at said election; any person wilfully voting or offering to vote at such election who has not been a resident of this State for six (6) months last preceding said election, or who is not twenty-one (21) years of age, or is not a citizen of the United States, or knowing himself not to be a qualified elector of such city or precinct or ward where and at the time he offered to vote; any person knowingly procuring, aiding or abetting any violation hereof

shall be deemed guilty of a misdemeanor, and shall, on conviction thereof before any court having jurisdiction, be punished by a fine of not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or be imprisoned in the city or county jail not less than ten (10) days, nor more than ninety (90) days, or by both such fine and imprisonment.

Laws 1911, page 295.

SEC. 23. *Initiative and Referendum.* The people of such city, in addition to the method of legislation hereinbefore provided, shall have power of direct legislation by the initiative and the referendum.

Laws 1911, page 301.

SEC. 24. *Initiative: Method of Exercise.* The initiative shall be exercised in the following manner:

(a) A petition signed by qualified electors of the city, accompanied by the proposed legislation or measure in the form of a proposed ordinance, and requesting that such ordinance be submitted to a vote of the people if not passed by the council, shall be filed with the clerk.

Such petitions shall be substantially as follows: We, the undersigned, being qualified electors of the city of _____, State of Idaho, hereby declare that we have read, or heard read at length, section by section, the proposed ordinance or measure hereto attached, and fully understand its contents, meaning and purpose, and believe it should become a law of the city for the following reasons: (here state the reasons in not more than two hundred (200) words). That we hereby request that such ordinance or measure be submitted to a vote of the people if not passed by the council.

NAME OF SIGNER.

STREET NUMBER.

Any number of copies of the petition and ordinance thereto attached may be circulated at the same time and all shall be considered as one petition, but each petition must be verified by at least one (1) qualified elector, which verification shall state that affiant knows that all of the persons whose names are signed to the petition are qualified electors of the city, and that each signer, prior to placing his name upon the petition, read, or heard read at length, section by section, the proposed ordinance or measure thereto attached. Such verification may be made before any Notary Public.

Within ten (10) days from date of filing such petition the city clerk shall examine and from the voters registered ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to the said petition his certificate showing the result of said examination. If there is any doubt in the mind of the clerk as to the sufficiency, form, or legality of the proposed measure or ordinance, said clerk shall forthwith take it to the city attorney who shall, within two (2) days, transmit to the clerk a written opinion on the same, and if such opinion is adverse, he shall set forth therein the reasons and necessary changes to be made to make it proper and legal in form. If, by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten (10) days from the date of said certificate, and it shall be the duty of the clerk to notify at once, in writing, the person presenting the petition and ordinance of its or their insufficiency. If amended within said time, the clerk shall, within ten (10) days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same, without prejudice, however, to the filing of a new petition to the same effect. If the petition, or amended petition, shall be deemed sufficient, the clerk shall submit the same to the council at its next regular meeting.

(b) If such petition is signed by qualified electors equal to twenty-five (25) per centum of the total number of votes cast for mayor at the last preceding general municipal election, the council, within twenty (20) days after the attachment of the clerk's certificate to the accompanying petition, except as otherwise provided in this Act, shall either pass such ordinance without alteration or call a special election and submit it to popular vote at such special election, which must be held within forty (40) days after the date of the ordering thereof. *Provided, however,* That, if any other municipal election is to be held within ninety (90) days after the filing of the petition, said proposed ordinance shall be submitted without alteration to be voted upon at such other election.

(c) If such petition is signed by qualified electors in number equal to ten (10) and less than twenty-five (25) per centum of the total number of votes cast for mayor at the last preceding general municipal election and the said proposed ordinance be not passed by the council without alteration, be-

fore the commencing of publication of notice of the next municipal election, it shall be submitted to popular vote at such election; *Provided, however,* That such petition must be filed at least thirty (30) days before the date fixed for such election.

Laws 1911, page 301.

Cited: Swain vs. Fritchman (1912), 21 Ida., 783.

SEC. 25. *Referendum.* If, prior to the date when any ordinance shall take effect, a petition, which petition, and its requirements shall be substantially as required by the provisions of Section 17 of this Act, with the necessary changes made therein to meet the needs of this section, signed by qualified electors equal in number to twenty-five (25) per centum of the entire vote cast for mayor at the last preceding general municipal election, shall be filed with the clerk protesting against the enactment of such ordinance, it shall, by the filing of such petition, be suspended from taking effect. Immediately upon the filing of petition, the clerk shall certify the number of votes cast for mayor, at the last preceding general municipal election, and the number of signers of such petition, and shall present such certificate, petition and proposed ordinance to the council at its next meeting. Thereupon the council shall immediately reconsider such ordinance, and, if it do not entirely repeal the same, shall submit it to popular vote at the next municipal election; the council, in its discretion, may call a special election for that purpose; and such ordinance shall not take effect unless the majority of the qualified electors voting thereon at such election shall vote in favor thereof.

Laws 1911, page 303.

Application: Under this and the following section and Section 74 it was clearly the intention of the legislature that "ordinances making the annual tax levy and appropriations" should go into effect immediately upon their passage, and that they should not be subject to the referendum provisions of that act.

Swain vs. Fritchman (1912), 21 Ida., 783.

Application: When the council has acted upon a petition under Sec. 6825 by the passage of an appropriate ordinance, the referendum provision of the commission form of government law does not apply thereto. *Per-*rault vs. Robinson (1916), 29 Ida., 267; 158 Pac., 1074.

Compiler's Note: The number 17 in the first sentence is evidently a clerical error and should read 24.

SEC. 26. *Same: Council May Submit.* The council, of its own motion, may submit to popular vote, for adoption or rejection, at any election any proposed ordinance or measure in

the same manner and with the same force and effect as provided in this Act for their submission on petition.

Laws 1911, page 303.

Application: See annotations under Sec. 25.

SEC. 27. *Ballots.* The ballots used when voting upon such proposed and referred ordinances or measures shall be as above provided in this Act for voting upon ordinances or measures.

Laws 1911, page 303.

SEC. 28. *Publication of Ordinances.* The clerk shall publish every proposed or referred ordinance at least twice in the official newspaper of such city before the date of the election at which such proposition or ordinance is to be voted upon; and shall give such other notices and do such other things relative to such election as are required by the provisions of this Act, and by law, for general municipal elections.

Laws 1911, page 303.

SEC. 29. *Passage of Ordinance by People.* If a majority of the electors of such city, voting on any proposed ordinance or measure, shall vote in favor thereof, the same shall thereupon, or at the time fixed therein, become effective as a law of the city, or as a mandatory order to the council.

Laws 1911, page 304.

SEC. 30. *Inconsistent Ordinances.* If the provisions of two or more ordinances approved at the same election are inconsistent, the ordinance receiving the highest vote shall prevail.

Laws 1911, page 304.

SEC. 31. *Repeal or Amendment by Same Method.* No ordinance which has been adopted by popular vote, under the provisions of this Act, shall be repealed or amended, except by popular vote upon the same.

Laws 1911, page 304.

SEC. 32. *More Than One Ordinance May Be Proposed.* Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this Act, but there shall not be held, under the initiative and referendum herein provided for, more than one (1) special election in any period of six (6) months for such purpose.

Laws 1911, page 304.

SEC. 33. *Council May Prescribe Rules.* The council, by ordinance, may make other and further regulations to carry out provisions of this Act, not inconsistent herewith.

Laws 1911, page 304.

SEC. 34. *Recall.* The holder of any elective office, whether elected or appointed thereto, may be removed therefrom by recall; *Provided*, That no recall petition shall be filed against any officer until he has actually held his office for at least three (3) months.

Laws 1911, page 304.

Remedy Exclusive: The recall is exclusive as a means of removing officers in cities which have adopted the "Black Law," or commission form of government, and officers of such cities are not subject to removal under the general ouster statutes, Secs. 7445 to 7459 inclusive, Revised Codes. *Hodges vs. Tucker* (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 35. *Same: Procedure.* The recall shall be instituted by filing with the clerk a verified, written petition, requesting such removal, signed by qualified electors of the city, and stating the residence of each signer thereto.

Laws 1911, page 304.

Cited: *Hodges vs. Tucker* (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 36. *Same: Petition.* The form and contents of the petition shall be substantially as follows:

To the Council of _____:

We, the signers hereto, qualified electors of the city of _____, request the removal of (name of incumbent of elective office sought to be removed to be inserted) from the office of (name of office to be inserted). (Here there shall be inserted in not more than two hundred (200) words of the reasons for demanding the recall of the officer).

NAME.

Residence (Street and No.)

State of Idaho, }
County of _____ } ss.

(Name of petitioner to be inserted here)

-----, being first duly sworn, says that he is one of the signers of the foregoing petition; that the statements made therein are true, and that each signature ap-

pended thereto is the genuine signature of the person whose name it purports to be, as he verily believes.

(Petitioner sign here)

Subscribed and sworn to before me this-----day of
-----, 19-----.

Notary Public residing at
-----, Idaho.

Laws 1911, page 304.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 37. *Same: Duty of Clerk.* The petitions may consist of one (1) or more papers circulated separately, and the signatures thereto may be upon the paper or papers containing the formal petition, or upon other papers attached thereto. The verification may be made by one (1) or more petitioners, and the several parts of the petition may be verified separately and by different persons. All papers and documents comprising a single petition shall be filed with the clerk on the same day, and the clerk shall notify immediately, in writing, the officer sought to be removed.

Laws 1911, page 305.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 38. *Same: Objections by Officer.* Within ten (10) days after the filing of the petition, the incumbent whose removal was requested shall file, in writing, with the clerk his objections, if any, to the sufficiency of such petition, and he cannot thereafter contest its sufficiency upon any objection not so filed. Such objection shall be specific, and shall set forth the reasons for each objection, and no general objection to the qualifications of the signers of such petition shall be sufficient. If the result of the election be adverse to the incumbent, all defects in the petition shall be cured thereby.

Laws 1911, page 305.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 39. *Same: Presentation to Council.* Within two (2) days after date of filing of the petition, the clerk shall certify the number of votes cast for mayor at the last general municipal election, and the number of signers to such petition, and present such petition and certificate to the council at its next regular meeting.

Laws 1911, page 305.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 40. *Insufficient Petition.* If the petition be insufficient in any respect, it may be withdrawn by the person filing it, and amended as many times as desired, within forty (40) days of the original filing. The duty of the clerks shall be the same with respect to any amended petition as upon the original petition.

Laws 1911, page 305.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 41. *Election.* If a petition be signed by qualified electors in number equal to thirty-five (35) per centum of the total number of votes cast for mayor at the last preceding general municipal election, the council, within seven (7) days after the final certification by the clerk, unless the incumbent sought to be removed resign within five (5) days after such final certifications, shall order a special election to be held on a date fixed in such order, not less than forty (40) days, nor more than fifty (50) days from the date of such final certification; *Provided*, That if any other municipal election is appointed to be held within ninety (90) days from said final certification, the recall election shall be held at the same time as such other election.

Laws 1911, page 306.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 42. *Same.* If the petition is signed by qualified electors in number equal to twenty (20) per centum and less than thirty-five (35) per centum of the total number of votes cast at the last preceding general municipal election, the council, within seven (7) days after the final certification by the clerk, unless the incumbent sought to be removed resign within five (5) days after such final certification, shall order and fix the election upon the date of the next municipal election; *Provided*, That not less than ninety (90) days shall elapse between the date of the final certification of the recall petition by the clerk and the said municipal election.

Laws 1911, page 306.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 43. *Same: 200 Words for Both Parties in Election Call.* In the published call for any election at which the recall of any such officer is used under the provisions of this Act there shall be printed in not more than two hundred (200) words the reason for demanding the recall of the officer, as set forth in the recall petition, and in not more than two hundred

(200) words the officer sought to be recalled may justify his course in office, provided that such officer file with the mayor such statement within two (2) days after receiving notice of the filing of such recall petition.

Laws 1911, page 306.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 44. *Incumbent a Candidate.* At such election, the incumbent shall be a candidate without nomination unless he file written notice to the contrary with the clerk before the ballots are printed.

Laws 1911, page 306.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 45. *General Laws Apply.* The procedure for nominations and election shall be the same as in general municipal elections.

Laws 1911, page 306.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 46. *Incumbent Defeated: Effect.* If the incumbent shall not be re-elected, his tenure of office shall terminate upon the determination of the result of the election by the canvassing board. His successor shall qualify for office immediately thereafter, and shall hold office for the unexpired term.

Laws 1911, page 306.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 47. *Disqualification of Officer Recalled.* An officer, removed from office by recall election, or who shall resign from such office pending recall proceedings against him, shall not be appointed to any city office or employment within two (2) years after such removal or resignation.

Laws 1911, page 306.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 48. *More Than One Officer May Be Recalled.* Two (2) or more elective officers may be joined in one petition for removal.

Laws 1911, page 307.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 49. *Vacancy.* If a vacancy occur in the office after a removal election has been ordered, the election shall nevertheless be held as in this Act provided.

Laws 1911, page 307.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 50. *Council May Prescribe Rules.* The council may, by ordinance, make such further regulations as may be necessary to carry out the provisions of this Act relative to the recall of an official or officials.

Laws 1911, page 307.

Cited: Hodges vs. Tucker (1914), 25 Ida., 563; 138 Pac., 1139.

SEC. 75. *Abandonment of Commission Form: Procedure.* Any city which shall have operated for more than six (6) years, under the provisions of this Act, may abandon such organization hereunder, and accept the provisions of the general law of the State then applicable to cities of its population, or if now organized under special charter, may resume said special charter as follows:

Upon the petition of not less than twenty-five (25) per centum of the electors of such city, a special election shall be called at which the following proposition only shall be submitted:

Shall the city of (name of city) abandon its organization under the Act of the Eleventh Session of the Legislature of Idaho and become a city under the general law governing cities of like population, or if now organized under special charter, shall it resume said special charter?

If a majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the State for cities of like population, or prescribed by special charter if such city had been incorporated under special charter at the time of adopting the provisions of this Act; and upon qualification of such officers, such city shall again become organized under such general law of the State, or special charter, as the case may be; but such change shall not in any manner or degree affect the property, rights or liabilities of such city, but shall merely extend to such change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared generally as provided by the provisions of this Act, in so far as the provisions thereof are applicable.

Laws 1911, page 314.

SEC. 76. *Petitions in General.* Petitions provided for in this Act shall be signed by none but the legal voters of the city. Each petition shall contain, in addition to the names of the

petitioners' residence, their age and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made.

Laws 1911, page 314.

CHAPTER XXIV.

CRIMES AGAINST THE ELECTIVE FRANCHISE.

Section	Section
6354. Official neglect or malfeasance.	6365. Riotous conduct and interference with election.
6355. Refusal to be sworn or to answer questions.	6366. Betting on elections.
6356. Illegal voting or interference with election.	6367. Offenses not otherwise provided for.
6357. Attempting to vote when not qualified, or to repeat.	6368. Sale of liquor on election day.
6358. Procuring illegal votes.	6369. Tampering with certificates of nomination or ballots.
6359. Officers attempting to change result.	6370. Destroying and defacing supplies.
6360. Attempt of officer to ascertain vote.	6371. Electioneering.
6361. Forging or counterfeiting returns.	6372. Attempt to influence votes.
6362. Adding to or subtracting from votes.	6373. Bribery of electors.
6363. Aiding and abetting crimes.	6374. Fraudulent permission of registration.
6364. Intimidation, corruption and frauds.	6375. Illegal registration by voter.
	6376. Placing placards in booths.

SEC. 6354. *Official Neglect or Malfeasance.* Every person charged with the performance of any duty, under the provisions of any law of this State relating to elections, who wilfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by this Code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the State prison not exceeding five years, or by both.

SEC. 6355. *Refusal to be Sworn or to Answer Questions.* Every person who, after being required by the board of judges at any election, refuses to be sworn, or who, after being sworn, refuses to answer any pertinent question propounded by such board, touching his right, or the right of any other person, to vote, is guilty of a misdemeanor.

SEC. 6356. *Illegal Voting or Interference With Election.* Every person not entitled to vote, who fraudulently votes, and every person who votes more than once at any one election, or knowingly hands in two or more tickets folded together, or changes any ballot after the same has been deposited in the ballot box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll list, or ballots, or ballot box, for the purpose of breaking up or invalidating such election, or wilfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony.

SEC. 6357. *Attempting to Vote When Not Qualified, or to Repeat.* Every person not entitled to vote, who fraudulently attempts to vote, or who, after being entitled to vote, attempts to vote more than once at any election, is guilty of a misdemeanor.

SEC. 6358. *Procuring Illegal Votes.* Every person who procures, aids, assists, counsels or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, is guilty of a misdemeanor.

SEC. 6359. *Officers Attempting to Change Result.* Every officer or clerk of election who aids in changing or destroying any poll list, or in placing any ballots in the ballot box, or taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with the ballots polled any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to prevent it, or carries away or destroys, or knowingly allows another

to carry away or destroy, any poll list, ballot box, or ballots lawfully polled, is guilty of a felony.

SEC. 6360. *Attempt of Officer to Ascertain Vote.* Every officer, judge, or clerk of an election, who, previous to putting the ballot of an elector in the ballot box, attempts to find out any name on such ballot, or who opens, or suffers the folded ballot of any elector which has been handed in, to be opened or examined previous to putting the same into the ballot box, or who makes, or places any mark or device on any folded ballot, with a view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such officer, judge, or clerk has fraudulently or illegally discovered to have been voted for by such elector, is punishable by fine of not less than fifty nor more than five hundred dollars.

SEC. 6361. *Forging or Counterfeiting Returns.* Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or wilfully substitutes forged or counterfeit returns of election in the place of the true returns, for a precinct, town, or ward where an election was actually held, is guilty of a felony.

SEC. 6362. *Adding to or Subtracting from Votes.* Every person who wilfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns, is guilty of a felony.

SEC. 6363. *Aiding and Abetting Crimes.* Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections, is punishable by imprisonment in the county jail for the period of six months, or in the State prison not exceeding two years.

SEC. 6364. *Intimidation, Corruption and Frauds.* Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever, to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or furnishes any elector wishing to vote, who cannot read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon,

or defrauds any elector at any such election, by deceiving and causing such elector to vote for a different person, for any office, than he intended or desired to vote for; or who, being officer, judge, or clerk of any election, while acting as such, induces, or attempts to induce, any elector, either by menace or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor.

SEC. 6365. *Riotous Conduct and Interference With Election.* Any person who wilfully disturbs, or is guilty of any riotous conduct at or near, any election place or voting precinct, with intent to disturb the same, or interferes with the access of the electors to the polling place, or in any manner, with the free exercise of the election franchise of the voters, or any voter there assembled, or disturbs or interferes with the canvassing of the votes, or with the marking of the returns, is guilty of a misdemeanor.

SEC. 6366. *Betting on Elections.* Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

SEC. 6367. *Offenses Not Otherwise Provided For.* Every person who wilfully violates any of the provisions of the laws of this State relating to elections is, unless a different punishment for such violation is prescribed by law, punishable by fine not exceeding one thousand dollars, or by imprisonment in the State prison not exceeding five years, or by both.

SEC. 6368. *Sale of Liquor on Election Day.* No spirituous, malt, vinous, or intoxicating liquor shall be sold at retail or given away, nor shall any saloon or bar room, or place where such liquor is sold or given away, be open on any general election day from the hour of six o'clock a. m. to the hour of eight o'clock p. m. within this State, or within the limits of any incorporated city or town thereof. Whoever violates, or in any manner aids another in violating, the provisions of this section, shall be punished by a fine not exceeding one hundred dollars and not less than twenty-five dollars, and the revocation of the license of any saloon or bar room wherein such liquor is sold or given away.

No person shall introduce in any way into any polling place on election day, until after the vote is canvassed and counted, any spirituous, malt, vinous or intoxicating liquor, and any election officer drinking any such liquor in such place, or being intoxicated therein during such election or counting, shall be imprisoned in the county jail not exceeding six months, or be fined not exceeding three hundred dollars, or both.

SEC. 6369. *Tampering With Certificates of Nomination or Ballots.* No person shall falsely make, or make oath to, or fraudulently deface, or fraudulently destroy, any certificate of nomination, or any part thereof, or file, or receive for filing, any certificate of nomination, or letter of withdrawal, knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination which has been duly filed, or any part thereof, or wilfully delay the delivery of any ballots, or forge or falsely make the official endorsement on the ballot, or wilfully destroy any ballot. Every person violating any of the provisions of this section shall be deemed guilty of a felony, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years.

SEC. 6370. *Destroying and Defacing Supplies.* No person shall, during the election, remove or destroy any of the supplies or conveniences placed in the booths or compartments for the purpose of enabling the voter to prepare his ballot, or prior to or on the day of, election, wilfully deface or destroy any list of candidates posted in accordance with the provisions of Title 3 of the Political Code concerning elections. No person shall, during an election, tear down or deface the cards printed for the instruction of voters. Every person wilfully violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars.

Cross Reference: Political Code, Title 3, Secs. 344-484.

SEC. 6371. *Electioneering.* No officer of election shall do any electioneering on election day. No person shall do any electioneering on election day within any polling place, or any building in which an election is being held, or within one hundred feet thereof, nor obstruct the doors or entries thereto, or prevent free ingress to, and egress from, said building. Any election officer, sheriff, constable or other peace officer is hereby

authorized, and it is hereby made the duty of any such officer, to arrest any person violating any of the provisions of this section, and such offender shall be punished by a fine not exceeding one hundred dollars, or less than twenty-five dollars.

SEC. 6372. *Attempt to Influence Votes.* No person shall attempt to influence the vote of any elector by means of a promise or a favor, or by means of violence or threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of a debt, or discharging from employment, or bringing a suit or criminal prosecution, or any other threat or injury to be inflicted by him, or by any other means.

SEC. 6373. *Bribery of Electors.* No person shall in any way offer a bribe to an elector to influence his vote.

SEC. 6374. *Fraudulent Permission of Registration.* Any registry agent, or other person, who in any manner shall wilfully or corruptly permit any person not entitled to registration or to a certificate of registration, to be registered or have a certificate of registration, or who delays or fails to deliver the certified copies of the official register and the check list to the judges of election as required by law, or who permits any person to register after the date on which the registration books close, or who shall otherwise wilfully or corruptly violate any of the provisions of the law governing elections, the penalty for which is not herein specially prescribed, shall be punished for each and every offense by imprisonment in the penitentiary for a term of not less than one year nor more than five years, or by a fine of not less than one hundred nor more than two thousand dollars, or by both such fine and imprisonment in the discretion of the court.

SEC. 6375. *Illegal Registration by Voter.* Any person who shall wilfully cause, or endeavor to cause, his name to be registered in any other election district than that in which he resides, or will reside prior to the day of the next ensuing election, except as herein otherwise provided, and any person who shall cause, or endeavor to cause, his name to be registered, knowing that he is not a qualified elector, and will not be a qualified elector on or before the day of the next ensuing election, in the election district in which he causes or endeavors to cause such registry to be made, and any person who shall induce, aid or abet any one in the commission of either of the acts in this sec-

tion enumerated and described, shall be fined not less than fifty dollars nor more than five hundred dollars, or be confined in the county jail for not less than one month nor more than six months, or both.

SEC. 6376. *Placing Placards in Booths.* Any person or officer of election who shall put, or permit to be put, into a voting booth, any placard, notice or device, except the sample ballots and cards of instruction as by law provided, intended or likely to call the attention of the voter to any candidate, or to urge the voter to vote for any particular candidate, or shall put, or allow anything to be put, into such booths for the use or comfort of the voter whereby the claims of any candidate are urged upon the voter, either directly or indirectly, shall be imprisoned in the county jail not to exceed three months, or fined not to exceed five hundred dollars, or both.

APPENDIX.

- A. Congressional Districts.
- B. Legislative Apportionment.
- C. Elective City Officers.

APPENDIX A.

CONGRESSIONAL DISTRICTS.

SECTION 1. *State Divided into Two Districts*: That for the election of representatives in Congress, the State of Idaho is hereby divided into two Congressional districts to be known as the First and Second Districts.

Laws 1917, Ch. 121, Sec. 1, p. 408.

SEC. 2. *First Congressional District*. The First Congressional District shall be composed of the following named counties: Adams, Boise, Boundary, Bonner, Benewah, Custer, Canyon, Clearwater, Gem, Idaho, Kootenai, Lewis, Lemhi, Latah, Nez Perce, Shoshone and Washington, Valley and such other counties that may hereafter be created out of the territory included within the boundaries of said counties.

Laws 1917, Ch. 121, Sec. 2, p. 408.

SEC. 3. *Second Congressional District*. The Second Congressional District shall be composed of the following named counties: Ada, Bannock, Blaine, Bingham, Bonneville, Bear Lake, Cassia, Elmore, Franklin, Fremont, Gooding, Jefferson, Lincoln, Madison, Minidoka, Owyhee, Oneida, Power, Twin Falls, and Teton, Butte, Camas, and such other counties that may hereafter be created out of the territory included within the boundaries of said counties.

Laws 1917, Ch. 121, Sec. 3, p. 409.

SEC. 4. *Candidates Must Reside in District*. That all candidates for election as representatives in Congress shall be residents of the Congressional District from which they seek such election.

Laws 1917, Ch. 121, Sec. 4, p. 409.

APPENDIX B.

LEGISLATIVE APPORTIONMENT.

SEC. 25. *Apportionment of the Legislature*: The apportionment of the houses of the Legislature is and shall be as follows:

Each county in the State of Idaho and any county which may hereafter be created shall constitute a senatorial district and shall elect one senator.

The several counties shall elect members of the House of

Representatives as follows: Each county shall elect one representative for each 2,500 votes and remaining fraction thereof amounting to 1,000 votes or more cast in said county at the last general election, based on the total vote cast for all candidates for Governor: *Provided*, That there shall be at least one representative from each county. It shall be the duty of the Secretary of State to certify to the county auditor of each county on or before the first day of April, 1918, and biennially thereafter the number of representatives in the Legislature said county will be entitled to elect at the following election. When any new counties have been created, subsequent to the last general election for Governor, the total vote cast for Governor in the territory included in any such new county and in the territory remaining in any county or counties from which said new county or counties have been created shall be estimated by the Secretary of State as nearly as possible from the election returns and the legislative apportionment figured thereon.

Laws 1917, Ch. 165, Sec. 1, p. 494.

APPENDIX C.

ELECTIVE CITY OFFICERS.

SEC. 2184. *Election and Qualifications of Councilmen*: Each ward of said city shall have at least two councilmen who shall be chosen by the electors of the entire city from the qualified electors of their respective wards and who shall serve for two years and until their successors shall be elected and qualified. No person shall be eligible to the office of councilman who is not at the time of his election an actual resident of the ward for which he is elected and a qualified elector under the Constitution and laws of the State of Idaho, and if any councilman shall remove from the ward for which he is elected his office as a councilman shall thereby become vacant. Whenever there shall be a tie in the election of councilmen it shall be determined by lot by the judges of election of the ward in which it shall happen.

As Amended Laws 1917, Ch. 49, Sec. 1, p. 110.

SEC. 2186. *Officers Elective and Appointive*. At the time of the biennial election hereinafter provided for there shall be elected a mayor, a city clerk and the councilmen hereinbefore provided for. The mayor, with the consent of the council,

shall appoint a city treasurer, a city attorney, a city engineer, a police judge, a chief of police and an overseer of streets, and the mayor may appoint a city bandmaster, who shall hold their offices for two years unless sooner removed by the mayor with the consent of the council. The mayor, by and with the consent of the council, shall appoint such a number of regular policemen as may be necessary and may also appoint special policemen from time to time as exigencies arise. Such police officers appointed by the mayor and the council in accordance herewith shall be removable at any time by the mayor: *Provided*, The council may provide by ordinance that the city clerk shall be ex-officio police judge.

As Amended Laws 1917, Ch. 49, Sec. 2, p. 110.

TABLE OF CASES

	Page
Adams v. Lansdon, 18 Ida. 483, 110 Pac. 280.....
.....3, 6, 24, 25, 31, 34, 35, 36, 37, 38, 39, 42
Andrews v. Board of Commissioners, 7 Ida. 453, 63 Pac. 592.....	101
Baker v. Scott, 4 Ida. 596, 43 Pac. 76.....	45, 50, 65
Bannock County v. Bunting, 4 Ida. 156, 37 Pac. 277.....	8, 101
Bissett v. Pioneer Irrigation District, 21 Ida. 98, 120 Pac. 461.....	3
Blake v. Jacks, 18 Ida. 70, 108 Pac. 534.....	8
Brown v. Village of Grangeville, 8 Ida. 784, 78 Pac. 151.....	120
Budge v. Gifford, 26 Ida. 521, 527, 144 Pac. 333.....	13
Byrns v. City of Moscow, 21 Ida. 398, 121 Pac. 1034.....	120
Castle v. Bannock County, 8 Ida. 124, 67 Pac. 35.....	11
Coffin v. Richards, 6 Ida. 741, 59 Pac. 562.....	120
Corker v. Village of Mountainhome, 20 Ida. 32, 116 Pac. 108.....	121
Cunningham v. George, 3 Ida. 456, 31 Pac. 809.....	10, 11, 46, 86
Davies v. Board of County Commissioners, 26 Ida. 450, 143 Pac. 945.....	83, 86
Doan v. Board of County Commissioners, 3 Ida. 38, 26 Pac. 167.....	7, 11
Dunbar v. Board of County Commissioners, 5 Ida. 407, 49 Pac. 409.....	101
Ferbache v. Drainage District, 23 Ida. 85, 128 Pac. 553.....	3, 5, 6
Fuller v. Corey, 18 Ida. 558, 110 Pac. 1035.....	35, 36, 43, 60
Gilbert v. Canyon County, 14 Ida. 437, 94 Pac. 1029.....	103
Gillesby v. Board of County Commissioners of Canyon County, 17 Ida. 586, 598, 107 Pac. 71.....	4, 5, 53, 56, 99
Grant v. Lansdon, 15 Ida. 342, 97 Pac. 960.....	48
Green v. State Board of Canvassers, 5 Ida. 130, 47 Pac. 259.....	7, 9, 63
Hays v. Hays, 5 Ida. 154, 47 Pac. 732.....	8, 88
Hertle v. Ball, 9 Ida. 193, 72 Pac. 953.....	10, 123, 124
Hodges v. Tucker, 25 Ida. 563, 138 Pac. 1139.....	129, 131, 150, 151, 152, 153, 154
Holmberg v. Jones, 7 Ida. 752, 65 Pac. 563.....	8, 9
Huffaker v. Edgington, 30 Ida. 179, 163 Pac. 793.....	51, 65
Independent Highway District v. Ada County, 24 Ida. 416, 134 Pac. 542	103, 105
Johnston v. Savidge, 11 Ida. 204, 81 Pac. 616.....	12
Joy v. Gifford, 22 Ida. 301, 125 Pac. 181.....	12
Kessler v. Fritchman, 21 Ida. 30, 119 Pac. 692.....	11, 12, 13, 128, 131, 133
Knight v. Trigg, 16 Ida. 256, 100 Pac. 1060.....	4
Lansdon v. State Board of Canvassers, 18 Ida. 596, 111 Pac. 133.....
.....8, 33, 88, 89, 90, 123

	Page
Leach v. Village of Nez Perce, 24 Ida. 322, 133 Pac. 926.....	7, 15
Lippincott v. Carpenter, 22 Ida. 675, 127 Pac. 557.....	7, 93, 94, 95, 96, 97, 98
McBee v. Brady, 15 Ida. 761, 100 Pac. 97.....	9, 63
McDonald v. Doust, 11 Ida. 14, 81 Pac. 60.....	7, 8
McDougall v. Sheridan, 23 Ida. 191, 203, 128 Pac. 954.....	47
McGrane v. Nez Perce County, 18 Ida. 714, 112 Pac. 312.....	4, 63, 65
McNutt v. Lemhi County, 12 Ida. 63, 84 Pac. 1054.....	101
Miller v. Davenport, 8 Ida. 593, 70 Pac. 610.....	60
Napton v. Meek, 8 Ida. 625, 70 Pac. 945.....	49
Nims v. Gilmore, 17 Ida. 609, 107 Pac. 79.....	53, 56
Olympia M. & M. Co. v. Kerns, 24 Ida. 481, 135 Pac. 235.....	87, 88
Ostrander v. City of Salmon, 20 Ida. 153, 117 Pac. 692.....	121
People v. George, 3 Ida. 72, 26 Pac. 983.....	7, 8
Pioneer Irrigation District v. Walker, 20 Ida. 605, 119 Pac. 304.....	3, 4, 6
Phillips v. Curtis, 4 Ida. 193, 38 Pac. 405.....	47, 48
Platt v. City of Payette, 19 Ida. 470, 114 Pac. 25.....	120, 121
Powell v. Spackman, 7 Ida. 693, 65 Pac. 503.....	4, 6
Powers v. City of Boise, 22 Ida. 286, 293-4, 125 Pac. 194.....	129
Roberts v. Kartzke, 18 Ida. 552, 111 Pac. 1.....	86
Sabin v. Curtis, 3 Ida. 662, 32 Pac. 1130.....	8, 10
Seawell v. Gifford, 22 Ida. 295, 125 Pac. 182.....	24, 26
Shepherd v. Grimmett, 3 Ida. 403, 31 Pac. 793.....	6
Shoshone County v. Proffitt, 11 Ida. 763, 84 Pac. 712.....	8
Shoshone Highway District v. Anderson, 22 Ida. 109, 125 Pac. 219.....	10, 53
State v. West, 20 Ida. 387, 118 Pac. 773.....	16
State v. Vineyard, 9 Ida. 134, 72 Pac. 824.....	12
State ex rel. Spofford v. Gifford, 22 Ida. 613, 126 Pac. 1060.....	
.....	12, 23, 25, 26, 39, 42, 43, 45, 46, 47, 91, 92
Swain v. Fritchman, 21 Ida. 783, 125 Pac. 319.....	128, 129, 133, 148
Territory v. Anderson, 2 Ida. 573, 21 Pac. 417.....	56
Toncray v. Budge, 14 Ida. 621, 95 Pac. 26.....	123
Veatch v. City of Moscow, 18 Ida. 313, 109 Pac. 722.....	121
Village of Kendrick v. Nelson, 13 Ida. 244, 89 Pac. 755.....	5
Vineyard v. City Council, 15 Ida. 436, 98 Pac. 422.....	115
Walling v. Langsdon, 15 Ida. 282, 97 Pac. 396.....	22, 23, 39, 45, 46, 47
Whitla v. Quarles, 15 Ida. 604, 98 Pac. 631.....	63, 98
Wiggin v. City of Lewiston, 8 Ida. 527, 69 Pac. 286.....	4, 5, 6
Williams v. Lewis, 6 Ida. 184, 54 Pac. 619.....	63
Wilson v. Bartlett, 7 Ida. 271, 62 Pac. 416.....	5, 7, 56, 94, 95, 96
Wooley v. Watkins, 2 Ida. 590, 22 Pac. 102.....	15

INDEX

A		Page
Absent Voting		76
Affidavit, false		80
Application for ballot.....		76
Ballot, application for.....		76
Challenging absentee's vote.....		79
Death, effect of.....		79
Deposit of ballot.....		78
Double voting prohibited.....		79
Effect of death.....		79
False impersonation		80
Folding of ballot.....		77
General election laws applicable.....		80
Inclosure		77
Interpretation of chapter.....		80
Issuance of ballot.....		77
Neglect by officers.....		80
Neglect to return ballot.....		80
Penalty for violation.....		80
Rejection of defective ballots.....		79
Return of ballot.....		78
Transmission of ballot to polls.....		78
Violation, penalty for.....		80
Abstract of Returns		
See canvass of returns.		
See State Board of Canvassers.		
Additional Qualifications of Voters		
See constitutional provisions.		
Appointment		
Distributing Clerk		20
Judges		20
Arrest		
See general provisions.		
Assessor		
See county officers.		
Asylums		
Inmates of—See residence.		
Attorney General		
See state officers.		
Auditor		
See county officers.		
See direct primary elections.		
See state officers.		
B		
Ballot boxes		59
See conduct of elections.		
See canvass of returns.		

Ballots

See absent voting.
 See ballots and supplies.
 See Commission form of government.
 See conduct of elections.
 See constitutional provisions.
 See direct primary elections.
 See errors and mistakes.

	Page
Ballots and supplies.....	58
Ballot—boxes	59
Ballot—form—errors and omissions.....	65
Ballot—form for submission of special question.....	63
Ballots—contents	60
Ballots—distribution of	66
Ballots—folding of	66
Ballots—form of	60
Ballots—how counted	65
Ballots—number of—record	66
Ballots—official	59
Ballots—sample	67
Boxes—ballot	59
Contents of ballots.....	60
Counting of ballots.....	65
Delivery and receipt of supplies.....	66
Distribution of ballots.....	66
Errors and omissions.....	65
Folding of ballots.....	66
Form of ballots.....	60
Instruction cards and sample ballots.....	67
Official ballots	59
Official election—stamp	58
Receipt and delivery of supplies.....	66
Record of number of ballots.....	66
Sample ballots	67
Special question—form of ballot.....	63
Stamp—official election	58
Supplies—delivery and receipt of.....	66

Board of Canvassers

See State Board of Canvassers.

Bond Elections

See county bond elections.
 See municipal bond elections.

Bonds

See county bond elections.
 See municipal bond elections.
 Street improvement—election

121

Boxes—ballot	59
--------------------	----

C

Candidates

See direct primary elections.
 See nominations.

Canvass

See canvass of returns.
 See direct primary elections.
 See State Board of Canvassers.

	Page
Canvass of returns.....	81
See errors and mistakes.	
See presidential electors.	
Abstract of votes—disposition of.....	86
Abstracts by County Commissioners.....	85
Application of sections.....	85
Ballot boxes—duplicate sets.....	83
Ballots—comparison of	81
Ballots—void	81
Canvass of votes.....	81
Comparison of poll lists, ballots and stubs.....	81
Count of votes.....	82, 84
Count of votes—certificate by officers.....	82
County Commissioners—abstract of returns.....	85
Direct primary	40
Election officers—two sets.....	83
Judges to join in making returns.....	84
Poll lists—comparison of.....	81
Primary, direct	40
State Board of Canvassers	
See State Board of Canvassers.	
Supplies—disposal after canvass.....	82
Void ballots	81
Votes—canvass of	81
Central Committees	
See direct primary elections.	
Certificates of Election	
See State Board of Canvassers.	
Certificates of Nomination	
See nominations.	
Challenge	
For want of citizenship.....	73
Keepers of houses of ill-fame.....	15
Prostitutes	15
Changing county boundaries.....	97
Ballot—form of	98
Election—conduct of	98
City Officers	
See Appendix C.	
Clerk	
See county officers.	
See direct primary elections.	
See distributing clerk.	
Compensation	21
Clerk of District Court	
See county officers.	
Commission Form of Government	
Abandonment of—procedure	154
Acceptance of nomination.....	137
Additional rules prescribed by council.....	150
Amendment of ordinance adopted by referendum.....	149
Ballots for elections for officers.....	138
Ballots—form of	140, 141
Ballots—names of candidates.....	140
Ballots—names of candidates printed on.....	134

Commission Form of Government— <i>Continued</i>	Page
Ballots—preparation of	138
Ballots—samples	141
Ballots—second election	140
Bribery	144
Carriages unlawful	144
Certificates of nomination.....	135
Certificates of nomination—clerk to furnish.....	135
Certificates of nomination—duties of clerk.....	136
Certificates of nomination—when filed.....	135
Certificates of nomination—who may sign.....	135
Certificates of nomination—withdrawal of candidate.....	136
Certificates of nomination—withdrawal of name.....	136
Charters void after adoption of.....	132
Cities may adopt.....	128
City officers—election of.....	133
City officers—nominations of.....	134
Council may prescribe rule not inconsistent herewith.....	150
Crimes—penalties	145
Election for adoption.....	129
Election for adoption—general laws apply.....	132
Election for adoption—officers.....	131
Election for adoption—registration.....	131
Election for city officers.....	133
Election for officers—ballots.....	138
Election for officers—registration.....	143
General election laws apply.....	144
General election laws apply to election for adoption.....	132
Informalities in elections.....	144
Initiative	146
Initiative—method of exercise.....	146
Nominations—acceptance of	137
Nominations—clerk to furnish certificates of.....	135
Nominations—publication of	137
Nominations of city officers.....	134
Officer recalled—disqualification of.....	153
Officers—election of	133
Officers—failure to qualify.....	144
Officers—nominations of	134
Officers of election for adoption.....	131
Officers—term and vacancies.....	129
Officers—vacancies	144
Officers—who elected	142
Officers—who elected at second election.....	142
Petition for adoption.....	129
Petition of nomination—how preserved.....	137
Petition of nomination of officers.....	134
Petition of nomination—when filed.....	137
Petitions generally	154
Publication of notice of nominations.....	137
Recall	150
Recall—duties of clerk.....	151
Recall election	152
Recall election—additional rules	154
Recall election—call of.....	152
Recall election—notice of call of.....	152
Recall election—general laws apply.....	153
Recall election—incumbent a candidate.....	153
Recall election—incumbent defeated.....	153

Commission Form of Government— <i>Continued</i>	Page
Recall election—one or more officers recalled.....	153
Recall election—vacancy	153
Recall petition	150
Recall petition—amendments	152
Recall petition—insufficient	152
Recall petition—objections by officer.....	151
Recall petition—presentation to council.....	151
Recall—procedure	150
Recalled officer disqualified.....	153
Referendum	146
Referendum—amendment or repeal of ordinance adopted by.....	149
Referendum—ballots	149
Referendum—council may submit.....	148
Referendum—inconsistent ordinances	149
Referendum—method of exercise.....	148
Referendum—number of proposed ordinances.....	149
Referendum—passage of ordinance.....	149
Referendum—publication of ordinance.....	149
Referendum—repeal of ordinance adopted by.....	149
Registration for election of officers.....	143
Repeal of ordinance adopted by referendum.....	149
Sample ballots	141
Second election for officers	142
Second election—general provisions govern.....	143
Second election—when held	143
Term of officers.....	129
Vacancies among officers	129
Vacancies—how filled	131
Voter may write in names.....	141
What cities may adopt.....	128
Compensation	
Clerks	21
Judges	21
Presidential electors	92
Conduct of Elections	
Ballot boxes—opening of.....	69
Ballots—damaged	71
Ballots—defaced	75
Ballots—delivery of to electors.....	70
Ballots—deposit in box.....	72
Ballots—deposit in box—unstamped ballots.....	72
Challenged voter—duty of clerks.....	74
Challenged voter—oath of.....	74
Challenged voter—refusal to take oath.....	75
Challenge—judges duty	75
Challenging voters	72, 73, 74
Changing polling place—proclamation and notice.....	68
Clerks—duty of—challenged voter.....	74
Closing polls	68
Constable—duties of	69
Damaged ballots	71
Delivery of ticket to electors.....	70
Deposit of ballots in box.....	72
Deposit of unstamped ballots in box.....	72
Information—not to be divulged.....	72
Judges' duty to challenge.....	75
Judges may administer oaths.....	69
Manner of voting.....	70

Conduct of Elections— <i>Continued</i>	Page
Notice of change of polling place.....	69
Oath—judges may administer.....	69
Oath of challenged voter.....	74
Oath of election officers.....	68
Oath—refusal of challenged voter.....	75
Officers not to divulge information.....	72
Officers' oath	68
Opening and closing polls.....	68
Opening ballot boxes.....	69
Opening supplies	69
Polling place—changing of.....	68
Poll lists—form of.....	75
Polls—opening and closing	68
Proclamation and notice of change of polling place.....	69
Residence—how determined	74
Spoiled ballots	71
Stubs and defaced tickets.....	75
Supplies—opening of	69
Tickets—defaced	75
Tickets—delivery to electors.....	70
Voter—refusal to take oath when challenged.....	75
Voters—challenging of	72, 73, 74
Voting—duration of	69
Voting—manner of	70
Congressional Districts	
See Appendix A.	
Constable	
See conduct of elections.	
See precinct officers.	
Constitution	
See constitutional provisions.	
Constitutional provisions	3
Amendment to constitution.....	8, 9
Ballot—secret guaranteed	4
Counties—division of	7
County seats—removal of.....	7
Division of counties.....	7
Laws—special and local prohibited.....	4
Legislature may prescribe additional qualifications of voters.....	6
Local and special laws prohibited.....	4
Qualifications of voters.....	3, 4, 5
Qualifications of voters—additional—Legislature may prescribe.....	6
Recall	6
Removal of county seats.....	7
Residence for voting purposes.....	6
Revision of constitution by convention.....	9
Secret ballot guaranteed.....	4
Special and local laws prohibited.....	4
Suffrage—right of guaranteed.....	3
Voters—additional qualifications—Legislature may prescribe.....	6
Voters—qualifications of	3, 4, 5
Voters—residence of	6
Contested Elections	
Ballots—examination of	126
Contest papers—custody of.....	126
Contest papers delivered to presiding officer.....	126
Contest papers—opening	126

Contested Elections— <i>Continued</i>	Page
Evidence—preservation of	127
Examination of witnesses.....	124
Fees—officers	126
Fees—witnesses	125
Grounds for contest.....	122
Incumbent defined	123
Jurisdiction—contests over executive offices.....	123
Jurisdiction—contests over legislative offices.....	124
Misconduct—sufficient to vitiate election.....	123
Notice of contest.....	124
Notice of contest—service.....	124
Notice of receiving contest papers.....	126
Officers—fees	126
Poll books—examination of.....	126
Preservation of evidence.....	127
Production of papers.....	125
Receipt of contest papers—notice.....	126
Subpoena—application for	124
Subpoena—disobedience of—penalty	125
Subpoena—how issued	125
Testimony—certified	125
Testimony—preserved	125
Testimony—taken	125
Witnesses—examination of	124
Witnesses—fees and mileage.....	125
Contests	
See contested elections.	
Convention	
See nominations.	
Coroner	
See county officers.	
Counties	
See constitutional provisions.	
County Attorney	
See county officers.	
County Auditors	
See direct primary elections.	
County Bond Elections	
Ballot—form of	104
Canvass of returns.....	104
Conduct of	103
Funding bonds	113
General election law applicable.....	103
General election—voting on bonds.....	104
Lien of road taxes.....	113
Notice of	103
Officers of election.....	104
Road bonds	105
Road bonds—assessments for amount issued.....	108
Road bonds—form of ballots.....	107
Road bonds—issuance of.....	108
Road bonds—two-thirds vote.....	108
Roads—special assessment districts.....	105
Roads—special tax district assessments.....	109
Roads—special tax districts—appeal to District Court.....	110
Road tax—levy by counties.....	112
Road tax—levy in special districts.....	111

County Bond Elections— <i>Continued</i>	Page
Road Tax—Lien	113
Special tax districts not exempt from general taxation.....	114
Tax districts—special—not exempt from general taxation.....	114
County Boundaries	
See changing county boundaries.	
County Central Committees	
See direct primary elections.	
County Commissioners	
See canvass of returns	
See county officers.	
See direct primary elections.	
County Officers	
To be elected—central committee.....	37
To be elected—enumerated	11
County Seats	
See constitutional provisions.	
Petition for removal.....	93
Petition for removal—how signed.....	94
Petition for removal open to inspection.....	94
Removal—contests have precedence.....	96
Removal election—canvass of returns.....	97
Removal election—challenging voters.....	96
Removal election—result of vote.....	97
Removal election—time for holding.....	93
Removal of	92
Removal petition—contesting right to sign.....	94
Removal—petition for	93
Removal petition open to inspection.....	94
Removal—procedure in contest.....	95
Removal—signing of petition.....	94
Removal—voting for	96
Voting for removal	96
Crimes	
See commission form of government.	
Crimes against elective franchise.....	155
Adding to votes.....	157
Aiding and abetting.....	157
Ascertaining vote—attempt of officer.....	157
Attempting to change result.....	156
Attempting to repeat.....	156
Attempting to vote when unqualified.....	156
Attempt of officer to ascertain vote.....	157
Ballots—tampering with	159
Betting on elections.....	158
Bribery of electors.....	160
Certificates of nomination—tampering with.....	159
Corruption	157
Counterfeiting returns	157
Crimes—aiding and abetting.....	157
Defacing and destroying supplies.....	159
Electioneering	159
Forging returns	157
Frauds	157
Fraudulent permission of registration.....	160
Illegal registration by voter.....	160
Illegal votes—procuring of.....	156

Crimes against elective franchise— <i>Continued</i>	Page
Illegal voting	156
Influencing votes	160
Interference with election.....	156, 158
Intimidation	157
Liquor—sale of on election day.....	158
Offenses not herein specified.....	158
Official malfeasance	155
Official neglect	155
Placards—placing in booths.....	161
Placing placards in booths.....	161
Procuring illegal votes	156
Refusal to answer questions.....	155
Refusal to be sworn.....	155
Registration by voter—illegal.....	160
Registration—fraudulent permission	160
Result—officer attempting to change.....	156
Returns—counterfeiting	157
Returns—forging	157
Riotous conduct	158
Sale of liquor on election day.....	158
Subtracting from votes.....	157
Supplies—defacing and destroying.....	159
Tampering with ballots.....	159
Tampering with certificates of nomination.....	159
Votes—adding or subtracting.....	157

D

Direct primary elections.....	22
Acceptance of nomination.....	25
Ballot—how printed	27
Ballots—who to retain.....	42
Candidates—certified list	26
Candidates—double nomination	40
Candidates—election expenses	34, 35
Candidates—how nominated	22
Candidates—publication of list by County Auditors.....	27
Candidates—qualifications of	23
Candidates—tie vote	42
Candidates—who may nominate	26
Candidates—who nominated	41
Canvass by County Commissioners.....	42
Clerk of county—duties	42
County Auditors—duties of.....	34
County Auditors—publication of certified list of candidates.....	27
County Central Committees.....	37
County Clerk—duties	42
County Commissioners—canvass	42
Date of holding.....	23
Distribution of election laws.....	34
Election officers—duties	40
Expenses of candidates.....	34, 35
False swearing—punishment	32
Fee for filing nomination.....	24
First choice votes.....	41
Forgery	33
General election laws applicable to.....	33
Improper influences prohibited.....	36
Independent nominations—restrictions on.....	47
Influences—improper—prohibited	36

Direct primary elections— <i>Continued</i>	Page
Judiciary—non-partisan	26
Liquor—sale of—prohibited	33
Manner of voting.....	31
Nomination—acceptance of	25
Nomination paper—fee	24
Nomination paper—form of	23
Nomination paper—when filed.....	23
Nomination paper—where filed.....	25
Non-partisan—judiciary	26
Official primary ballot—how printed.....	27
Personal expenses	36
Petition for nomination.....	24
Platforms	39
Political party—defined	23
Polls—time of opening and closing.....	33
Primary ballot—how printed.....	27
Qualifications of voters.....	32
Registration	44
Second choice votes.....	41
Secretary of State—certified list of candidates.....	26
Secretary of State—duties of.....	34
State Board of Canvassers.....	43
State Central Committee.....	37
Statement of expenses.....	35
Supplies	32
Swearing—punishment for false.....	32
Tally sheets—form	40
Tie vote	42
Time of opening and closing polls.....	33
Vote—tie	42
Voters—qualifications of	32
Votes—first and second choice.....	41
Voting—manner of	31
Disqualifications	
See qualifications of voters.	
Distributing Clerk	
Appointment of	20, 21
Distribution	
Copies of election laws.....	10, 34
District Court	
Clerk—see county officers.	
District Judges	
See state officers.	
E	
Election Expenses	
See direct primary elections.	
Election officers	
See canvass of returns.	
See distributing clerk.	
See judges.	
Election Precincts	
Boundaries	17
Establishment of	17
Elections	
See county bond elections.	
See direct primary elections.	

Elections—*Continued*

See municipal bond elections.
See municipal elections.
See voters.

Conduct of

See conduct of elections.	Page
Notice of	13
Notice of—posting	13
Proclamation	12
Special question	13
Time for holding.....	10

Elections for Erection of Public Buildings

Bond issue—statutes governing.....	102
Court House—bond election.....	101
Court House—letting of contract.....	101
Court House—purchase of site.....	101
Statutes governing	102

Electors

See registration of electors.
See voters.

Errors and mistakes.....	89
Correction of mistakes.....	90
Names on ballots misspelled.....	89

Examination by Registrar

Keepers of houses of ill-fame.....	16
Prostitutes	16
Unlawful cohabitation	16

Expenses

See direct primary elections.

F

False Statement

See penalty.

False Swearing

See direct primary elections.

Forgery

See direct primary elections.

Franchise

See crimes against elective franchise.

G

General Election Laws

See direct primary elections.

General provisions	10
Application of title.....	10
Distribution of copies of law.....	10
Privilege from arrest.....	10

Governor

See state officers.

H

Holidays	127
----------------	-----

Houses of Ill-fame

Keepers of—challenge	16
Keepers of—examination	16
Keepers of—not qualified to vote.....	15
Keepers of—penalty for false statement.....	16

I

- Improper Influences
 See direct primary elections.
- Independent Nominations
 See nominations
- Influences
 See direct primary elections.
- Initiative
 See commission form of government.
- Inmates of Asylums
 See residence.
- Inspector of Mines
 See state officers.

J

- Judges
- | | |
|----------------------------|------|
| See state officers. | Page |
| Appointment of | 20 |
| Compensation | 21 |
| To appoint clerks..... | 21 |
| Vacancies—how filled | 21 |
- Judiciary
 See direct primary elections.
- Justices of the Supreme Court
 See state officers.
- Justices of the Peace
 See precinct officers.

K

- Keepers of Houses of Ill-fame
- | | |
|----------------------------------|----|
| Challenge | 16 |
| Examination of by Registrar..... | 16 |
| Not qualified to vote..... | 15 |
| Penalty for false statement..... | 16 |

L

- Laws
 See constitutional provisions.
- Legislature
 See Appendix B.
 See State Board of Canvassers.
- Lieutenant Governor
 See state officers.
- Liquor
 Sale of—prohibited 33

M

- Municipal Bond Elections
- | | |
|---|-----|
| Bond election | 119 |
| Bond ordinance | 119 |
| Purposes for which bonds may be issued..... | 118 |
| Street improvement bonds..... | 121 |

Municipal Elections	Page
Certificates of election.....	117
Chartered cities not bound hereby.....	117
City Clerk is Registrar.....	115
Clerks—filling vacancies	115
Compensation of registration officers.....	116
Electors' oaths	116
Electors—qualifications	115
General election laws apply hereto.....	117
General registration and election laws apply hereto.....	117
Judges and Clerks—filling vacancies.....	115
Notice of	115
Qualifications of electors.....	115
Registrar—City Clerk	115
Registration books	116
Registration officers—compensation	116
Registration—time	116
Time for holding.....	115

N

Nomination Paper
See direct primary elections.

Nominations

See direct primary elections.	
Certificate of nomination.....	45
Certificate—preservation of	48
Certificate—time for filing.....	48
Certificate—where filed	46
Convention	45
Declination of	49
Fee for filing.....	24
Independent—restrictions on	47
List of—certified	48
Names of candidates certified by Secretary of State.....	48
Other than by convention.....	46
Publication of	48
Secretary of State to certify to County Auditors.....	48
Stickers on tickets.....	50
Tickets—stickers on	50
Vacancies—how filled	49

Non-partisan Judiciary
See direct primary elections.

Notices

Elections—of	13
Elections—of—posting	13

O

Oath

See conduct of elections.
See registration of electors.

Officers

See county officers.
See election officers.
See registration of electors.
See state officers.

Official primary ballot

See direct primary elections.

P

	Page
Penalty	
Keepers of houses of ill-fame—false statement.....	16
Prostitutes—false statement	16
Petition	
See direct primary elections.	
Platforms	
See direct primary elections.	
Political Party	
See direct primary elections.	
Polling Places	
See conduct of elections.	
Designation	17
Plan	17
Poll Lists	
Form	75
Polls	
See conduct of elections.	
Time of opening and closing.....	33
Precinct Officers	
To be elected—enumerated	12
Precincts	
See election precincts.	
Presidential Electors	12, 90
Certificates of election.....	90
Compensation	92
Election for	91
Meeting—notice to Governor.....	91
Meeting of Electors.....	91
Personal Expenses	
See direct primary elections.	
Tie vote	92
Vacancies	92
Vacancy—election to fill.....	92
Primary Ballot	
See direct primary elections.	
Primary Elections	
See direct primary elections.	
Probate Judge	
See county officers.	
Prosecuting Attorney	
See county officers.	
Prostitutes	
Challenge of	16
Examination of by Registrar.....	16
False statement—penalty	16
Not qualified to vote.....	15
Public Administrator	
See county officers.	
Public Buildings	
See elections for erection of public buildings.	

	Q	Page
Qualifications of voters.....		14
See constitutional provisions.		
See direct primary elections.		
Disqualifications		15
Keepers of houses of ill-fame.....		15
Prostitutes		15
Unlawful cohabitation		15
	R	
Recall		7
See commission form of government.		
Recorder		
See county officers.		
Referendum		
See commission form of government.		
Registrar		
Keepers of houses of ill-fame—examination of.....		16
Prostitutes—examination of		16
Unlawful cohabitation		16
Registration of Electors.....		51
Appointment		51
Books		52
Challenge		56
Check lists		53
Check lists—preparation		55
Compensation of Registrars.....		58
County Commissioners to appoint Registrars		51
Duties of Registrar.....		53
Elector's register		55
Evidence of naturalization.....		53
Examination of electors.....		53
Hours of registration.....		53
Mandate to compel registration.....		58
Naturalization, evidence of.....		53
Notices, books and supplies.....		52
Oath of electors.....		54
Oath of Registrar.....		53
Preservation of Registrar's papers.....		56
Primary election		44
Qualifications of Registrars.....		51
Refusal of registration, record of.....		55
Registrar to estimate tickets required.....		56
Removal from precinct.....		57
Supplies		52
Transfer certificates		57
Vacancies, how filled.....		51
Voters, record of.....		55
Registration officers		52
Representatives		
See state officers.		
Residence		
Inmates of asylums.....		15
Sailors		15
Soldiers		15
Students		15
Voting purposes		6

Returns

See errors and mistakes.

Canvass of

See canvass of returns.

Road Taxes

See county bond elections.

S

Sailors

See residence.

Secretary of State

See direct primary elections.

See state officers.

Distribution of copies of election laws.....10, 34

Senators

See state officers.

Senators, U. S. 44

Declaration of choice by candidates for Legislature..... 43

Election of 44

Vacancies 100

Sheriff

See county officers.

Soldiers

See residence.

Special elections 99

Canvassing board—meeting of..... 99

Canvassing Board—time of meeting..... 99

Conduct of 99

Congressional vacancy 100

General election law applicable..... 99

Legislative vacancy 100

Notice of 99

Special Question

See ballots and supplies.

See elections.

Stamps

See ballots and supplies.

State Board of Canvassers..... 87

Abstracts—delay of counties in remitting..... 87

Certificates of election..... 88

Constitution of Board..... 87

Direct primary—duties 43

Duties as to direct primary..... 43

Duties of Board—statement of result..... 88

Duties of Board—tie vote..... 88

Legislature—list of members..... 89

Meetings of Board..... 87

Records of Board..... 88

Tie vote 88

Vacancies 43

State Central Committee

See direct primary elections.

State Officers

Judges—to be elected..... 12

To be elected—enumerated 11

Statement of Expenses
See direct primary elections.

Stickers on Tickets
See nominations.

Students
See residence.

Suffrage Page
Right of—guaranteed by Constitution..... 3

Superintendent of Public Instruction
See county officers.
See state officers.

Supplies
See ballots and supplies.
See canvass of returns.
See conduct of elections.
See direct primary elections.

Surveyor
See county officers.

Swearing
See direct primary elections.

T

Tally Sheets
Form 40

Tax Collector
See county officers.

Taxes—Road
See county bond elections.

Tickets
Stickers on 50

Tie Vote
See State Board of Canvassers.

Time
See elections.

Title
Election laws 10

Treasurer
See county officers.
See state officers.

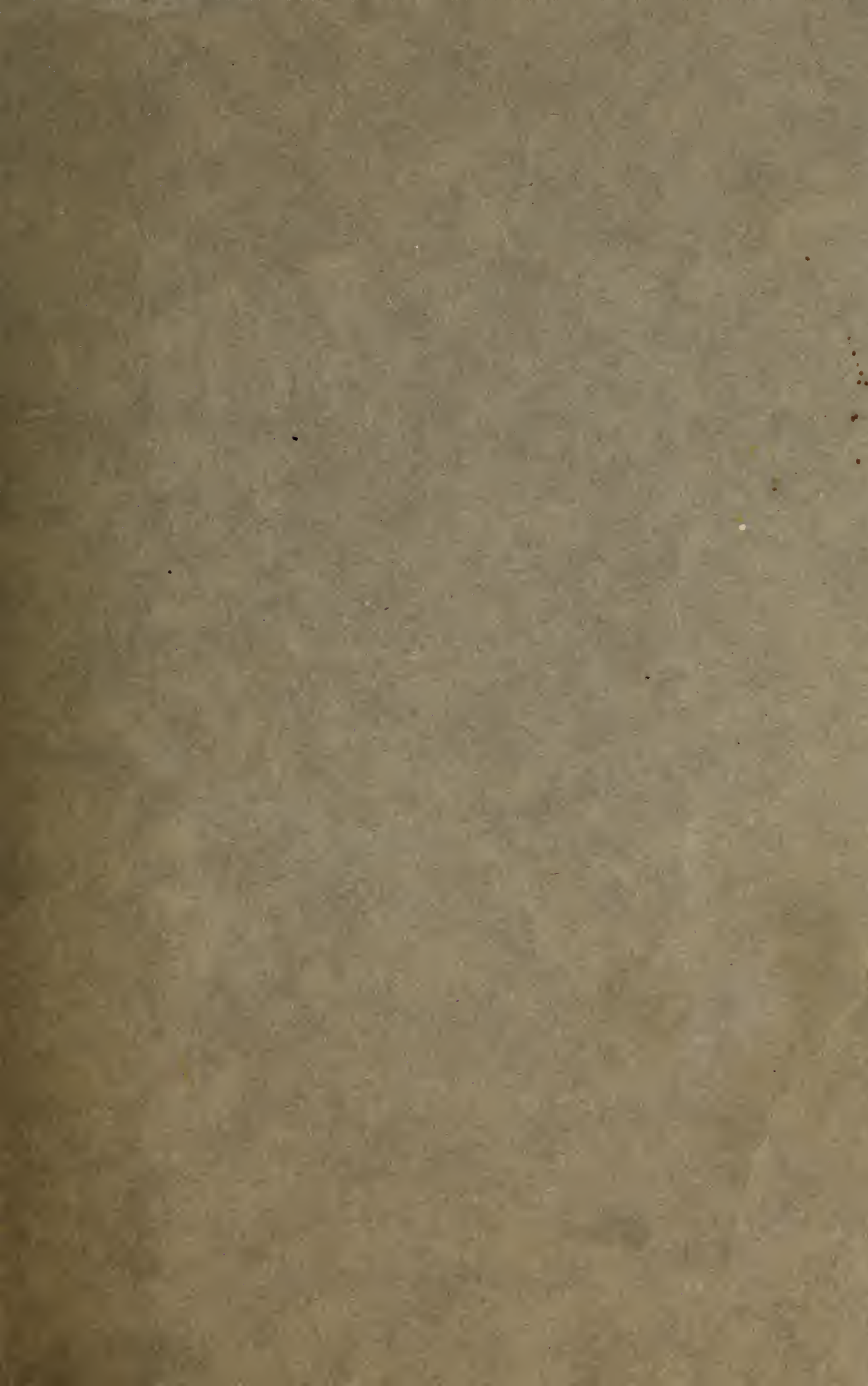
U

United States Senators..... 44
Declaration of choice by candidates for Legislature..... 43
Election of 44
Vacancies 100

V

Vacancies
See nominations.
Judges—how filled 21
United States Senators—how filled..... 100

Voters	
See conduct of elections.	Page
Residence, how determined.....	75
See electors.	
See qualifications of voters.	
See registration of electors.	
Votes	
See direct primary elections.	
Votes, Count of	
See canvass of returns.	
First choice votes.....	41
Second choice votes.....	41
Voting	
See absent voting.	
See conduct of elections.	
See direct primary elections.	





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BOISE, IDAHO